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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 258.

THE SWAN AND FINCH COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 28, 1902.

(18,427.)

28103

(18,427.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 29, 1902.

1 In the Court of Claims.

THE SWAN & FINCH CO.
v.
THE UNITED STATES. } No. 20991.

I.—*Petition.*

(Filed January 25, 1898.)

To the honorable the Court of Claims:

The claimant, The Swan & Finch Co., respectfully represents:

1. That it is a corporation organized under the laws of the State of New York, having its factory at Bayway, New Jersey, and its business office in the city of New York, and is now and has been for over three years last past engaged in business as a refiner of oils and manufacturer of lubricating oils, particularly for use in engines.

2. That in the process of manufacture of certain qualities of lubricating oil, rape-seed oil forms one of the essential ingredients; that said oil is mixed with petroleum products in such fixed proportions and in such manner as the necessities of the art require for the production of each quality of oil manufactured by this claimant.

3. That the claimant from time to time between January 1, 1895, and December 31, 1897, imported rape-seed oil for manufacture as above stated, paying thereupon the duty prescribed by the acts of August 28, 1894, paragraph 31, and of July 27, 1897, paragraph 39, at the rate of ten cents per gallon.

4. That between the 1st day of June, 1895, and the 31st day of December, 1897, the claimant exported a large quantity of lubricating oils manufactured by them from domestic petroleum products and imported rape-seed oil aforesaid.

5. That the imported rape-seed oil therein contained so appeared in the completed articles that the quantity or measure thereof might be ascertained.

6. That claimant filed with the collector of customs at New York a preliminary entry and thereafter filed a final entry, as required by the regulations of the Treasury Department, and in all other respects, so far as practicable, complied with the regulations of the Treasury Department; that the number of each final entry, the time of exportation and the quantity of imported rape-seed oil so manufactured and exported are as follows:

No. of entry.	Date.	Gallons of rape-seed oil.	
	1895.		
3,258	June	190	
3,259	July	1,815	
3,257	August	2,503	
3,253	September	330	
3,254	September	2.259	
3,252	October	4,765	
3,255	November	2,209	
3,250	November	1,676	
3,282	December	3,358	
3,289	December	632	
3,284	December	1,599	
			21,336
	1896.		
3,285	January	3,121	
3,290	February	4,145	
3,286	March	4,334	
4,490	April	4,143	
4,557	May	4,161	
5,416	June	6,765	
5,728	July	6,019.77	
7,071	August	4,505	
6,839	September	4,713.28	
514	October	4,147	
516	November	2,491.20	
519	December	4,939	
			53,485.19
	1897.		
1,459	January	2,608.63	
1,631	February	2,399.35	
2,055	March	5,122	
2,700	April	3,557.95	
3,707	May	4,393.13	
4,284	June	4,341.47	
4,835	July	3,640.83	
4,834	August	4,377.46	
5,343	September	4,335.97	
6,556	October	2,712.20	
155	November	4,693.20	
199	December	2,262	
			44,444.19
	Total		119,265.38

7. That the collector of customs at New York refused to liquidate the entries aforesaid or to take any final action thereon, because the oils so exported were not sent to any foreign port, but were intended for use upon seagoing vessels leaving the port of New York, bound for foreign ports, and were so used on said vessels; that no drawback has ever been paid upon the said exportations, although drawback has been allowed and paid on exportations of similar oils exported for landing in a foreign port, during the same time.

8. That none of the oil aforesaid was ever relanded in the United States.

9. That by reason of the foregoing premises the claimant is justly entitled to recover the amount of duties paid upon the quantity of rape-seed oil above set forth, at ten cents a gallon, less one per centum of such duties; and the claimant claims eleven thousand eight hundred and seven dollars and twenty-eight cents ($11,807.28).

No other action than as aforesaid has been had on this claim in Congress or by any of the departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant prays judgment for eleven thousand eight hundred and seven dollars and twenty-eight cents ($11,807.28).

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

3 Alden S. Swan, being duly sworn, deposes and says: I am the president of The Swan & Finch Co., the claimant in this case. I have read the above petition, and the matters therein stated are true to the best of my knowledge and belief.

ALDEN S. SWAN, *President.*

Subscribed and sworn to before me this 21st day of January, 1898.
[SEAL.] M. HENDRICKS,
Notary Public.

Certificate filed in New York Co.

II.—*General Traverse.*

And now comes the Attorney General, on behalf of the United States, and answering the second amended petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the said amended petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Govern-

ment of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney General.

III.—*Findings of Fact and Conclusion of Law.*

Filed December 16, 1901.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant was, in 1895, 1896, and 1897, a corporation engaged in business as importer, manufacturer, and exporter of oils at New York city and elsewhere in the United States.

4

II.

In the manufacture of certain kinds of lubricating oils, the claimant used imported rape-seed oil, on which duties had been paid.

III.

The claimant, during the years 1895, 1896, and 1897, placed on board of vessels in the port of New York, bound for foreign ports, lubricating oils manufactured as stated in finding II, and claimed a drawback of the duties paid on the imported rape-seed oil used therein, as provided by section 22 of the act of August 28, 1894, 28 Statutes at Large, 551, and section 30 of the act of July 27, 1897, 30 Statutes at Large, 211.

IV.

The claimant had, prior to such shipments, made application to the Secretary of the Treasury to fix a rate of drawback on the imported rape-seed oil so used in the various kinds of lubricating oils made by the claimant, and such rate had been established in accordance with the regulatons made by the Secretary of the Treasury.

V.

In lading lubricating oils as found in finding III, the claimant had, as far as practicable, complied with the regulations of the Secretary of the Treasury made in pursuance of the statutes cited, except as set forth in findings VII, VIII, and IX.

VI.

The Treasury Department allowed and paid drawback on such manufactured oils as were sent to foreign countries and there re-

anded, but has refused to pay drawback where such oils were consumed in use on seagoing vessels bound for foreign ports and not relanded.

VII.

On a portion of the oils aforesaid claimant failed to file with the collector of customs the entries required by the Secretary of the Treasury, and on others he filed such entries after the time limited by the regulations, or otherwise failed to comply with the regulations.

VIII.

It does not appear that the failure of complete compliance with the regulations in other respects was due to fault or negligence of the claimant. Such other omissions as occurred were in general due to the omission by officers of the Treasury Department of acts required of them by the regulations, the cause thereof being that the right alleged by the claimant to drawback was denied, and the same care in examination was not thought necessary as in case of entries to be liquidated in the custom-house. The practice of the Treasury Department is to waive such omissions upon due proof of exportation, and to pay the drawback.

IX.

No bills of lading were furnished in any of the entries herein referred to, although the same are required by the regulations of the department, because, on oils furnished for use on board the vessel, no bill of lading is issued because no freight is paid and no delivery is to be made to a foreign consignee.

X.

The amount of the drawback calculated as required by law on the oils aforesaid used on seagoing vessels bound for foreign ports and not relanded is, after deducting errors in calculation and duplications and all the entries referred to in finding VII, in excess of the sum of $3000.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the petition be, and the same is hereby, dismissed.

5 IV.—*Opinion of Court of Claims.*

Filed December 16, 1901.

HOWRY, J., delivered the opinion of the court:

This case depends upon the meaning of the words "exportation" and "export" as used in the statute which allows drawback on imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported. The claim is for drawback of duties paid upon imported rape-seed oil used in

the manufacture of lubricating oils, laden in 1895, 1896, and 1897, on vessels engaged in the foreign trade, not landed in any foreign country, but consumed on those vessels during the voyage. The statute under which the drawback is claimed is the act of August 28, 1894, 28 Stat. L., 551, and the act of July 27, 1897, 30 Stat. L., 211. The original provision (re-enacted in section 30 of the last act) is as follows:

"SEC. 22. That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties:

"*Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles, that the quantity or measure thereof may be ascertained:

"*And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided.

"That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, or exporter or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

It is contended for the claimants that the shipment of the oil upon the steamers and its consumption on the vessels constituted an exportation. The argument is drawn from the definition given to the verb and the contention is that the derivation of the word "export" is *ex*, out of, and *portare*, to carry, and that this is the primary meaning which must govern. That is to say, the exportation is sufficient when the materials are carried out of the country.

Restricted to the general definition, the etymological meaning of which is "to carry out of" or "away," the contention would cover this case. Lexicons, however, go farther. The words "to export" have a specific meaning. They mean "to send to a distant point, as commodities; send for sale or exchange to other countries or places." Exports refer to merchandise or commodities in the way of commerce shipped to foreign countries. An exporter is one who ships goods, wares, or merchandise of any kind to a foreign country or distant place for sale. An exportation is the act or practice of exporting or of sending out commodities from one country to another for traffic or sale. These specific definitions from standard lexicons show that the mere carrying out is not the only essential to an

export. Commercially, the commodities must go somewhere beyond the sea in shipments made from home ports.

The law dictionaries sustain this specific and technical meaning. Bouvier says exportation in common law is the act of sending goods and merchandise from one country to another. Rapalje and Lawrence say the same thing. Jacobs-Tomlins say it is the shipping or carrying out the native commodities of England to other countries. Black, English, Wharton, and others approve this specific definition and meaning. So, an exportation means, according to general understanding, the transfer of merchandise from one country to another.

The first and most elementary rule of construction is that words are used in statutes in their technical meaning if they have acquired one. From this presumption it is not allowable to depart unless adequate grounds are found either in the context or in the consequences which would result from the literal interpretation. (Endlich on Interpretation of Statutes, sec. 2.)

Besides the specific meaning given by the books there is much uniformity in the statement that an export is the opposite of an import.

But it is said that the terms "import" and "importation" merely mean "bringing in," and because in some of the general definitions given to those words there does not appear any restriction upon the converse words "export" and "exportation" it is argued that taking out is all that is necessary to an exportation. Thus it is said that in *American Sugar Refining Company v. United States* (181 U. S. R., 610), the court held that imported merchandise is that which arrives in this country, and it is upon that duties are to be paid, from which it is argued we must assume that exported merchandise is that which merely leaves this country.

6 And, by way of illustration, it is further argued that the words "emigrate" and "immigrate" are used in the same sense as "export" and "import;" that a man who dies on a voyage is none the less an emigrant, though he may never become an immigrant, and that a child born on a voyage is none the less an immigrant, though such child was never an emigrant.

In cases where shipments of merchandise for foreign ports are not completed by reason of the destruction or loss at sea of the merchandise in transit, the practice of the Treasury is to liquidate the entries and issue the proper certificate of drawback in accordance with the requirements of the regulation, after the loss and destruction of the merchandise so shipped has been duly authenticated. Under the regulations authorized to be made, this practice is the apparent counterpart of the rule adopted in American Sugar Refining Company, *supra*, where it was held that duties levied and collected upon an increased valuation of sugar drained on a voyage of moisture after the shipment and made more valuable by such drainage were lawful. The rule of the Treasury has never been held to include a shipment of something not intended to be landed elsewhere because such a shipment did not take the character of an export under the statute.

Those instances given which prevent an emigrant from becoming an immigrant and which make an immigrant of a child who was never an emigrant relate to persons, depend upon life and death, and create exceptions to a general rule. It is true an immigrant presupposes an emigrant, and an emigrant implies the landing of a person leaving his home for a new country. The accident of birth at sea in the one case and death in the other intervene to affect a status. An emigrant maintains that character until he lands. If he never lands, he is not an immigrant. Such exceptional cases are not analogous on a question relating to things, and certainly are not controlling. The exportation of things under statutes giving a drawback on such things when exported are governed by fixed rules. The specific and technical definitions applicable yet remain. It was said by a former Attorney General (Brewster), "As the legal notion of emigration is going abroad with the intention of not returning, so that of exportation is a severance of goods from a mass of things belonging to this country with the intention of uniting them with a mass of things belonging to some foreign country or other." (17 Op. Att'ys Gen., 583.) Because fish have no country or origin they too may become imports, though they were never exported from a foreign shore. The exception grows out of the peculiarity of such an import, even if any tariff act can be found which levies a duty upon fish.

A supposed case of goods produced on shipboard where a tariff is laid on the landing of such goods is suggested by the act of July 27, 1897, par. 224, 30 Stat. L., 170, 2 Supp. R. S., 665, under which a duty of 5 cents a dozen is laid on eggs. Counsel say that if a hen lays eggs on shipboard no customs officer would admit the eggs free of duty by reason of the claim that they were not imported because not brought from a foreign country. This may be true. It may also be true that such an interpretation by the customs officers may not be found to be the true rule. Aside from this, if the maxim *de minimis non curat lex* is without application to such a trivial claim, the essential of an export remains unaffected because it is necessary that in a shipment intent must exist to carry the articles to a foreign situs.

But an importation does not merely mean a bringing in. It takes place when the vessel arrives at a port of entry, intending there to discharge her cargo. The intent characterizes the act and determines its legal complexion. *United States v. Vowell* (5 Cranch, 658); *United States v. 10,000 Cigars* (2 Curt., 436); *Arnold v. United States*, (9 Cranch, 104); *Meredith v. United States* (13 Pet., 486).

Judge Story said that perhaps the argument that import meant merely "bringing into" might be consistent with the law of nations, yet under our revenue laws he was satisfied that an importation meant not merely a bringing within our jurisdictional limits, but also a bringing into some port, harbor, or haven with *an intent to land the goods there.* The italics appear in his original opinion. (*The Mary*, 1 Gallison, 208.)

Our attention has been invited to the various statutes relating to drawbacks to show, for the Government, that the refund was only

intended by Congress to be made on goods returned whence they came or to some other foreign country; and to prove on the other hand, for claimants, that the purpose existed by the later acts to avoid the effect of the first statute, which in express terms limited the drawback of duties to goods carried only to foreign ports.

But all the statutes, early and late, use the terms "export" and "exported" as used in the Constitution, and no higher or different meaning can attach to their use in the statute than that meaning which the words must receive in a constitutional sense.

The act of March 2, 1799, and which now appears as section 3015 of the Revised Statutes, provides that "a drawback of duties as prescribed by law shall be allowed and paid on all merchandise imported into the United States, in respect to all such merchandise as shall be exported to any foreign port other than the dominions of any foreign State immediately adjoining the United States, either from the district of original importation or from certain other districts." The restriction as to contiguous territory was subsequently removed by sections 2977, 3053, and 3056, Revised Statutes. On August 5, 1861, section 3019, Revised Statutes, was enacted in order to permit the refund of duties paid, by way of drawback, on the exportation of articles manufactured wholly from imported materials.

This provision enlarged section 3015, Revised Statutes Sec-
7 tion 25 of the act of October 1, 1890, section 22 of the act of August 28, 1894, and section 30 of the act of July 24, 1897, are alike, and still further enlarge the provisions of the original act by permitting the allowance on the exportation of articles manufactured wholly or in part of imported materials. By section 3057 the Secretary of the Treasury was authorized to prescribe such rules and regulations not inconsistent with the laws of the United States as might be deemed necessary to carry into effect those provisions relating to drawbacks and to prevent the illegal reimportation of merchandise exported as provided. Under the authority conferred by the act of July 24, 1897, drawback regulations were prescribed. By them a party intending to export with the benefit of drawback any merchandise on which duty had been paid was required to file with the collector an entry naming the vessel or conveyance in which and the place to which the merchandise was to be exported. Other articles provided for a bond for the production of proofs of landing abroad. Thus we have a departmental construction which is entitled to great respect, and though the departmental regulations do not override the law (*Campbell's case, supra*), contemporaneous construction by those charged with carrying the law into effect ought not to be rejected without cogent reasons. *United States v. Moore* (95 U. S. R., 760), *Brown v. United States* (113 U. S. R., 568) and numerous other authorities.

Especially ought the departmental construction to be given weight since no decision has been disclosed in the course of the century succeeding the act of 1799 which shows that the department viewed the term "export" as relating to anything but foreign commerce. It is true that in 1889 the department decided that merchandise used as ships' stores was not entitled to the drawback, but that de-

cision cannot be viewed as an admission that the principle existed any longer than necessary to call forth the decision upon the act of some subordinate making an unauthorized allowance.

The statutes all mean that there shall be a port of destination, as in section 3330, relating to the exportation of distilled spirits withdrawn from bonded warehouses. That statute which authorizes the cancellation of bonds required to be given for the exportation upon proof of loss at sea without neglect or fault of the owner or the shipper is in line with the regulations framed by the Secretary of the Treasury in other cases of loss or destruction.

Regarding the statutes, then, as defining export to mean the same kind of an export referred to in the Constitution, the discussion respecting the intention to promote the protective policy in the enactment of the statutes does not seem pertinent. Framed pursuant to the paramount law, the statutes must be construed with the Constitution and all together as one law. (*Cin., N. O. & T. R'y v. Ky.*, 115 U. S. R., 321.)

This brings us to the adjudged cases to ascertain the original meaning, if the true meaning can be found in the opinions of the courts. Those merely persuasive will be noticed first.

Two English cases cited seem to sustain the contention of the claimants. They are supported by one American case. On the other hand, the cases in this country generally are against the proposition that the exportation satisfies the statute by merely leaving the ports.

In *Stockton Railway Company v. Barrett* (11 Clark and Fin., 600), the question related to the meaning of the term "shipped for exportation" in a certain railway act—that is, whether those terms were confined to exportation to foreign countries or included shipments of coals to be carried coastwise to other parts of the kingdom. It was held that the destination of a shipment was not considered in deciding its character as an export.

In *Muller v. Baldwin* (52 L. J., Q. B., N. S., vol. 43, part 2, 164) the question on appeal was whether coal taken on board a vessel for use on the voyage was exported. The act did not relate to customs, and there was nothing in it to show that the word "exported" was used in other than its ordinary sense. The court said (differing from the lower court): "We agree as to the reasonableness of making a distinction between coals taken away for sale and coals taken for the necessary use of the vessel. There is nothing in the language of the act to show that the word 'export' was used in any other than its ordinary sense, namely, carried out of the 'port.'"

In *Forman v. Peaslee* (Monthly L. N., vol. 21, 1859) iron appeared to have been imported into this country from Great Britain, and the question was whether the exportation began at the time the iron left Wales for Liverpool or from the latter place. The court decided that the exportation began when the iron left Liverpool.

In *United States v. Forrester* (25 Fed. Cases, 1152) it is said that the commercial meaning of the word "import" is directly contrary to the term "export" and that both phrases have a technical meaning in the law. The term used is "import," and legislation employed that

term in its commercial sense, which is to bring from a foreign jurisdiction into this jurisdiction merchandise not the product of the country.

In *Kidd v. Flagler*, heard on appeal in the second circuit (78 Fed. Rep., 341), the appellate court reversed the judgment, but approved the original definition of the word "export," in the following language: "Ordinarily goods are exported when they are carried out of the country for the purpose of being transferred to a foreign situs. The intent characterizes the act and determines its legal complexion."

In *Kennedy v. United States* (95 Fed. Rep., 129) it was held that there was no exportation where bags were carried during successive voyages from one side of the ocean to the other alternately filled and emptied or landed on either side.

8 In *Clark & Co. v. Clark* (3 Woods, 408) it was held that the intent to land goods in some foreign country controls; that goods may take the character of exports while lying on shore awaiting shipment if the intent existed to take them away as stated.

In *Brown v. Maryland* (12 Wheat., 437) Chief Justice Marshall defined imports as articles brought into the country. In that case it was said: "Suppose revenue cutters were to be stationed off the coast for the purpose of levying the duty on all merchandise found in vessels which were leaving the United States for foreign countries; would it be received as an excuse for this outrage were the Government to say that exportation meant no more than carrying goods out of the country and, as the prohibition to lay a tax on imports or things imported ceased the instant they were brought into the country, so the prohibition to tax articles exported ceased when they were carried out of the country?"

Counsel for claimants think that the definition of imports given by this opinion excludes any question as to country of origin and that the quotation offered does not justify the conclusion that the exportation was not complete when the goods left the country. The case was one where the State law of Maryland required an importer to take a license and pay a tax before being permitted to sell a package of imported goods. It was held that the law was in conflict with the Constitution.

But no such limitation is claimed in the opinion of the court in *Woodruff v. Parham* (8 Wall., 138), affirming *Brown v. Maryland*. There the court said, "The words 'imports' and 'exports' are frequently used in the Constitution. They have a necessary correlation. * * * It is not too much to say that, so far as our research has extended, neither the word 'export,' 'import,' or 'impost' is to be found in the discussions on this subject, as they have come down to us from that time, in reference to any other than foreign commerce, without some special form of words to show that foreign commerce is not meant." The question at issue there was one between foreign and interstate commerce, from which it is argued that the decision is not applicable.

In *Campbell v. United States* (107 U. S. R., 413) the court said: "The purpose of the drawback provision is to make duty free imports which are manufactured here and then returned whence they

came or to some other foreign country—articles which are not sold or consumed in the United States." But for the concluding part of the paragraph the decision would cover this case.

In *Brown v. Houston* (114 U. S. R., 622) a case not cited at the argument or appearing in the briefs, it was held that the terms "imports" and "exports" in the Constitution have reference to goods brought from and carried to foreign countries alone and not to goods transported from one State to the other.

In *Fairbank v. United States* (181 U. S. R., 283)—another case overlooked at the argument—the court said that in *Woodruff v. Parham* (*supra*) is was held that the words "imports" and "exports" as used in the Constitution were used to define the shipment of articles between this and a foreign country, and not that between the States; and while, therefore, the case is no longer an authority as to what is or what is not an export, the proposition that a stamp duty on the article transported remains unaffected.

These decisions of the court of last resort speak for themselves. Though it is insisted that they leave the issue unsettled, we think the question has been finally determined if the statutes are to be interpreted by the constitutional meaning of the words under consideration. That they are to be so determined we cannot doubt. If the statutes were designed to give a different meaning, doubtless the difference would appear in language explicit enough to leave no room to doubt that a difference was intended. In attempting to define an export as different from that meaning which the fundamental law gave to it the statutes might be inoperative for some purposes. Of that, however, it is needless to inquire or do more than to suggest that the statutes providing for drawbacks are not so framed to mean a kind of an export different from that referred to in the Constitution. An exportation by that instrument means the landing of goods to some foreign place; that is to say, some foreign place must be the *terminus in quem*. Therefore, oil taken from this country and consumed on a voyage does not constitute an exportation of that article. We might as well say that provisions which go out on the same ship for use on the outward passage are exported.

Our interpretation of the statutes is strengthened, if not definitely settled, by the Supreme Court in the second case of *Dooley v. United States*, decided since this opinion was prepared more than a month ago. In the supplemental brief, submitted in the meantime for claimants at our instance (but to which the defendants waive reply), it is insisted that the discrimination drawn by the Supreme Court in the Dooley case was between foreign and domestic commerce just as previously, in *Woodruff v. Parham*, the distinction was drawn between foreign and interstate commerce; that the decision is without application, but so far as it is material here it favors the claimants in the declaration of a principle of definition, and that this principle is the general meaning of the word "export"—which must be so read as between one of two accepted definitions as to be in accord with the general object of the drawback law.

But the Supreme Court has said that the logical sequence of the case of *Woodruff v. Parham* is that the word "export" shall be given

a correlative meaning and applied only to goods exported to a foreign country.

Under the drawback statutes foreign destination is meant.

The petition is dismissed.

9

V.—*Judgment of the Court.*

THE SWAN & FINCH COMPANY
v.
THE UNITED STATES. } No. 20,991.

At a Court of Claims held in the city of Washington on the 16th day of December, 1901, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find in favor of the defendants, and do order, adjudge and decree that the petition be dismissed.

BY THE COURT.

VI.—*Appeal to the Supreme Court of the United States and Allowance of Same.*

In the Court of Claims.

THE SWAN & FINCH COMPANY
v.
THE UNITED STATES. } No. 20991.

Appeal.

Now comes the claimant, The Swan & Finch Company, and appeals to the Supreme Court of the United States from the judgment of this court, entered on the 16th day of December, 1901, dismissing its petition, and moves for an allowance of this appeal.

GEORGE A. & WILLIAM B. KING,
Attorneys for Claimant.

Filed February 25, 1902.

The aforesaid application for the allowance of appeal having been filed in open court February 25, 1902, it was ordered that the same be allowed as prayed for.

BY THE COURT.

10

In the Court of Claims.

THE SWAN & FINCH COMPANY
v.
THE UNITED STATES. } No. 20991.

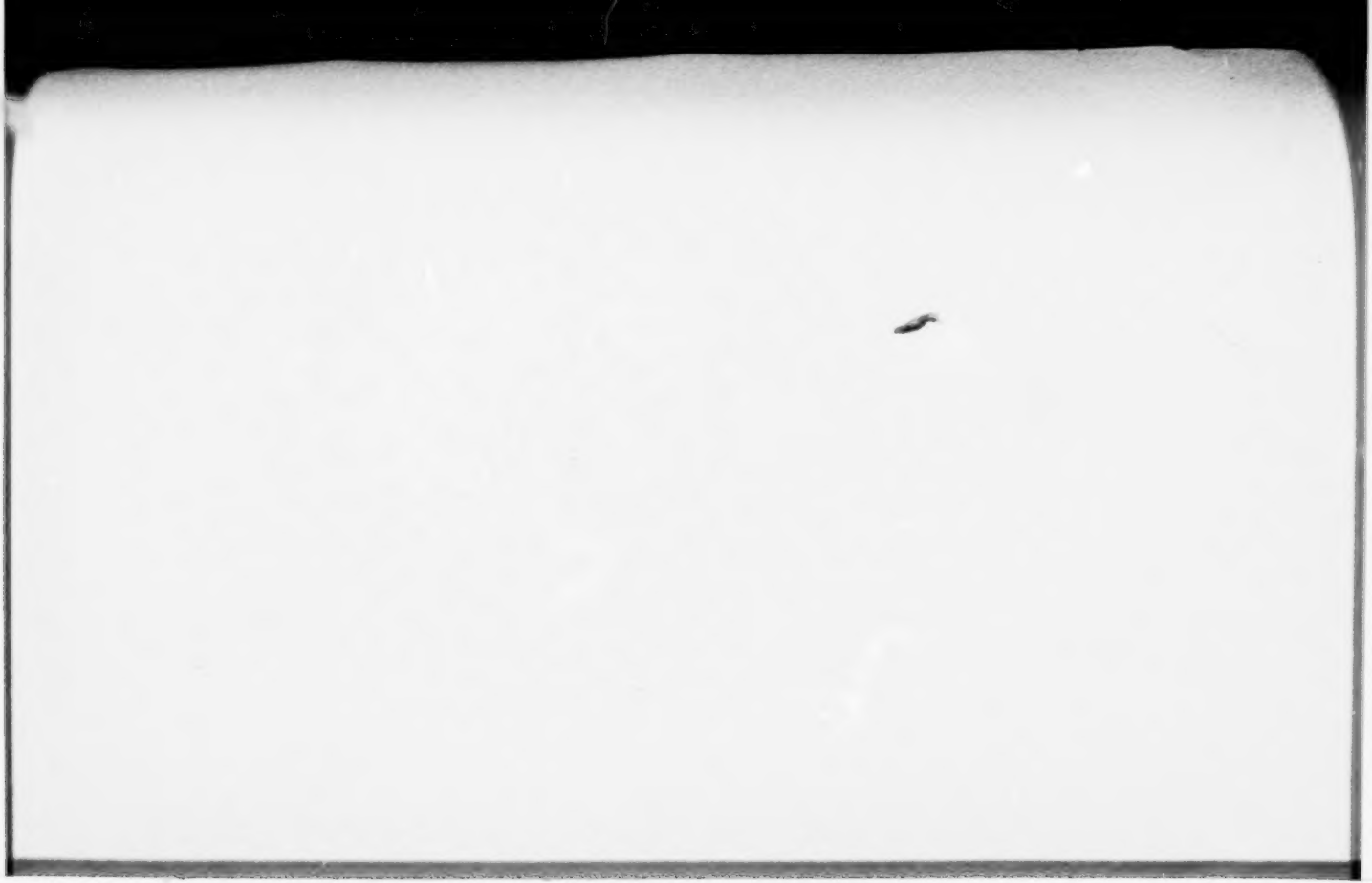
I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, of the judgment of the court, of the application for and the allowance of the appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 25 day of February, 1902.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Endorsed on cover: File No. 18,427 Court of Claims—Term No. 258 The Swan and Finch Company, appellant, *vs.* The United States. Filed February 28", 1902.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

THE SWAN & FINCH CO. *Appellant*,
v.
THE UNITED STATES. } No. 258.

Appeal from the Court of Claims.

BRIEF FOR APPELLANT.

Statement of Case.

This is a claim for drawback upon imported duty-paid materials used in exported manufactured articles. The imported material was rape-seed oil; the manufactured article was lubricating oil; the exportation consisted of carrying the oil from the port of New York upon steamers engaged in the foreign trade for use on the voyage, without landing in a foreign country. The issue is on the exportation.

The appellant alleges that this is a completed exportation; the United States contends that relanding in a foreign country is necessary to exportation. The court below sustained the latter contention.

The statute under which this claim is presented is section 22 of the act of August 28, 1894 (28 Stat. L. 551), re-enacted in identical words during the period when this claim was originating as section 30 of the act of July 27, 1897 (30 Stat. L. 211). It is as follows:

"That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties:

"*Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter, or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

The Court of Claims found that duty had been paid upon imported rape-seed oil used by the claimant in manufacturing lubricating oils; that these lubricating oils were placed on board vessels in the port of New York bound for foreign ports and that no proof was furnished of the relanding of said oils in foreign ports. The Treasury Department had fixed a rate of drawback on similar oils relanded in foreign countries and the claimant had been allowed and paid such drawback by the Treasury Department. It was denied in this case because the oils were consumed on the voyage. Such omissions as oc-

curred in complying with the regulations were without fault or negligence on claimant's part and were in general due to omissions by the officers of the Treasury, such as are usually waived upon proof of exportation.

The sole issue between the parties is whether the shipment of the manufactured articles, otherwise entitled to drawback, upon vessels bound for foreign ports and the use of such articles on the vessels without relanding is an "exportation" within the meaning of the statute cited.

Assignment of Error.

The appellant avers that the Court of Claims erred:

I. In not holding that the shipment of the manufactured article containing imported materials on a vessel in the foreign trade for use on the voyage was an exportation.

II. In holding that imported materials used in manufactured articles so shipped and used were not embraced within the provisions of the drawback law.

III. In not rendering judgment for the amount of the duty paid on such imported materials as provided by section 22 of the act of August 28, 1894, and section 30 of the act of July 27, 1897.

Argument.

The statute quoted makes "exportation" the test of the right to drawback. This claim depends upon the definition of the word "exportation" as used in the statute. The Court of Claims holds that "exportation" involves relanding in a foreign country. The appellant maintains that the exportation is complete with departure from this country on a vessel engaged in the foreign trade.

"Exportation" has Two Meanings.

The first source of information for definition of dis-

puted words is the usually received authoritative dictionaries. These contain the following definitions:

Murray's Philological Dictionary:

"EXPORT—verb, *ex*, out, *portare*, to carry.

"1. To carry (things or persons) out of a place; to take away, carry off.

"2. To send out (commodities of any kind) from one country to another.

"EXPORTATION—The action of exporting.

"1. *a.* (General) Carrying out of a place. *b.* The conveying or sending (persons) out of the country.

"2. The sending out (of commodities) from one country to another.

"3. (Quasi-concretely) Something carried out."

Webster's Dictionary:

"EXPORT—To carry or send abroad, or out of a country, especially to foreign countries, as merchandise or commodities in the way of commerce; the opposite of import."

Century Dictionary:

"EXPORT—1. To take or carry away.

"Specifically—2. To send to a distant point, as commodities; send for sale or exchange to other countries or places."

Standard Dictionary:

"EXPORT—To carry or send out or away, especially for trade from one country to another."

The derivation of the word is from the Latin *ex*, out of, and *portare*, to carry. Etymologically its meaning is simply "to carry out of," or "away."

The following law dictionaries recognize both meanings given in the literary dictionaries.

Anderson:

"EXPORT—To carry away or send out of the country.

"EXPORTS—Merchandise sent from one country to another."

Black:

"EXPORT—To send, to take, or carry an article of trade or commerce out of the country. To transfer merchandise from one country to another in the course of trade; to carry out or convey goods by sea."

Other law dictionaries recognize only the meaning implying relanding in a foreign country. The failure of some law dictionaries to recognize the primary meaning elsewhere recognized, proves only the imperfection of these dictionaries, particularly since we hereafter cite adjudicated cases giving this meaning.

These definitions show that the word has two meanings:

(1) Its primary, general or essential meaning—to carry or send out of a place, and

(2) Its secondary, specific or especial meaning—to send out from one country to another.

Of all goods sent out of this country but a small proportion fails to reach a foreign country; the amount consumed or lost at sea is minute in comparison. In ordinary use, therefore, the foreign destination is implied. We claim that, however usual, it is not essential and that here the original and primary definition of the word should be applied to goods carried out of the country on vessels in the foreign trade, although they never reach a foreign country.

Which meaning is to be preferred in this statute is to be decided by finding which is more in accord with the purpose of the statute. This principle is admirably stated in Black on the Interpretation of Laws (p. 56):

"Every statute is to be construed with reference to its intended scope and the purpose of the legislature in enacting it; and where the language used is ambiguous, or admits of more than one meaning, it is to be taken in such a sense as will conform to the scope of the act and carry out the purpose of the statute.

The Purpose of the Law.

We are fortunately possessed of decisions of this court which state precisely the purpose of the statute.

In *Campbell* v. *United States*, 107 U. S. 407, it is said (p. 413):

"The purpose of the drawback provision is to make duty free, imports which are manufactured here and then returned whence they came or to some other foreign country—articles which are not sold or consumed in the United States. The linseed in this case was bought abroad and imported for the purpose of being manufactured and the product immediately sent out of the country. The drawback provision was simply a mode of making the linseed so imported and exported without distribution in the country duty free, and we see no gratuity in the case."

To similar effect is the definition in *Tide Water Oil Co.* v. *United States*, 171 U. S. 210, where the court says (p. 216):

"The object of the section was evidently not only to build up an export trade but to encourage manufactures in this country, where such manufactures are intended for exportation, by granting a rebate of duties upon the raw or prepared materials imported, and thus enabling the manufacturer to compete in foreign markets with the same articles manufactured in other countries."

The Court of Claims had this statute under consideration in the case of the *Schlitz Brewing Co.* v. *United States* (35 C. Cls. 110), and said (p. 120):

"The true constituents of a system strictly protective must be that the American manufacturer shall manufacture from American products for the American market, and thereby help the American producer as well as himself. But the overproduction of modern machinery has of late years overstocked the home market, and Congress have sought by appropriate legislation to bring foreign

markets within the reach of American manufacturers. To that end the legislative policy has been to allow the home manufacturer to manufacture his articles out of imported materials coming into the country practically duty free."

Applying the purpose of the drawback law, as defined in these cases, to the present case, the question is extremely simple. A vessel engaged in the foreign trade is, so far as concerns the customs laws of the United States, foreign territory. The customs laws take effect at the custom house. Articles of foreign origin may be placed on such a vessel, while it is in a foreign port, and consumed on that vessel while in that port or on the high seas or in a port of the United States, without regard to the customs laws of the United States. A vessel in the foreign trade is open competitive territory, just as much as China or any other foreign country.

It is even more open to world competition than any land because no customs laws can give even to the country whose flag the vessel carries any preference in furnishing supplies to the vessel. It has the distinct advantage, too, of travelling from place to place and thus being able to select a market for purchasing most favorable to itself.

The American manufacturer, in the competition for supplying ships' stores, is placed at a disadvantage by the tariff laws imposing a duty upon materials entering into the manufacture of the articles which he wishes to sell for use on board the vessel. He is in just as unfavorable a position as when competing for a sale to a foreign country. For the purposes of a drawback law, which seeks to place the American manufacturer in a position equal to that of his foreign competitor in those markets where the protective tariff laws of the United States can give no advantage to the American, a ship in the foreign

trade occupies the position of a foreign country; it is open, not protected, territory.

The application of the law to the trade in ships' stores, as maintained by the claimant, is thus clearly within the purpose of the law. We have already seen that the primary meaning of the word used amply warrants such an application. When spirit and letter of the statute unite on one construction, why should another be sought?

Judicial Definitions.

The words "export" and "exportation" have often been judicially interpreted and it is said that the decisions have finally adjudicated these words in a meaning conclusive against this claim. We shall find that the American use of the words excludes the domestic trade but includes all foreign commerce whether between the United States and foreign ports or the United States and vessels engaged in the foreign trade.

In discussing the cases, we shall divide them into classes: (1) those where the precise distinction material to this case arose, and (2) those where this issue did not arise but the definition was incidental to some other discrimination. A very different importance attaches to these two classes. The former are judicial authorities; the latter have no more force than *obiter dicta* in their application to the distinction here discussed.

"We take it to be a sound principle," says Justice Miller in *Woodruff* v. *Parham* (8 Wall. 138), "that no proposition of law can be said to be overruled by a court which was not in the mind of the court when the decision was made."

The question here involved is: Does exportation include the carrying away by a foreign bound vessel of goods to be consumed on the voyage? This involves the question: Is exportation complete on leaving the port

or is relanding in a foreign country essential to its completion?

Definitions of the words "export" and "import," which would seem to require a foreign country as the place of destination on the one hand, or the place of origin on the other, are not to be received as authoritative in this case unless there was distinctly brought before the court in making the definition, either the question whether articles lost or consumed at sea are included within the term "export" or whether the "exportation" was completed when the goods left the port.

Cases Involving This Question.

In *Sampson* v. *Peaslee* (20 Howard, 571), the meaning of the words "the period of exportation" was in question in a statute requiring the ascertainment of duty by the value of the goods at this period. The court held that they meant "the date of the vessel's sailing." The language of the court is as follows:

"This court decided, in the cases of *Greely* v. *Howard*, 10 How. 225, and in *Maxwell* v. *Griswold*, 10 How. 242, in the year 1850, before the act of 3d March, 1851, had passed, that under the sixteenth and seventeenth sections of the tariff act of 30th August, 1842, 5 Stat. at L. 563, the value of merchandise at the *time of procurement* is to be ascertained, not its value at the time of *exportation*. Congress, with these differences in view, and particularly in consequence of the decision of this court in the cases just before cited, passed the act of March 3d, 1851. This court in 1855, in *Stairs et al.* v. *Peaslee*, 18th Howard, 521, 524, 525, in considering the act, uses this language, which is decisive of the time when the value of the goods subject to an *ad valorem* duty is to be estimated: 'The language of this act of Congress is general, and embraces all importations of goods that are subject to an *ad valorem* duty, and directs that their value shall be estimated and ascertained by the wholesale price at the period of exportation

to the United States in the principal markets of the country from which they are imported. The time and the place to which the appraisers are required to look when making their appraisement are both distinctly specified in the law, the time being *the period of exportation*, and the place the country from which they were imported into the United States. It makes no reference to their value in the country of production or the time of purchase. And as there is no ambiguity in the language of the act, and it embraces all goods subject to an *ad valorem* duty, the court would hardly be justified in giving a construction to it narrower than its words fairly import.' Though this extract was written with reference to the first point certified in that case, which was, whether the act of the 3d March, 1851, repealed so much of all former laws as provided that merchandise, when imported from a country other than that of production or manufacture, should be appraised at the market value of similar articles at the principal markets of the country of production and manufacture 'at the period of the exportation to the United States,' the court adds, that the law, taken by itself, will admit of but one construction; and that is, the appraisement must be made by the value of the goods in the principal markets of the country from which they are exported, *at the time of such exportation to the United States.*

"The case of *Stairs* v. *Peaslee*, considered in connection with what this court had decided under the revenue acts in *Greely* v. *Howard*, and in *Maxwell* v. *Griswold*, 10 How. 242, shows, whatever may have been the practice in computing the time for the assessment of duties, that this court viewed the act of the 3rd March, 1851, as having fixed the rule to be the time or date of the exportation, as that might be shown by the day of the vessel's sailing from the foreign port to the United States. Indeed, from the phraseology of the act, without reference to preceding acts upon the same subject, or what had been their construction, the same conclusion must be reached."

In *Irvine* v. *Redfield*, 23 How. 170, this court directly follows the foregoing case, saying that it was then decided (p. 172):

"That the day of the sailing of a vessel from a foreign port is the true period of the exportation of the goods; and that the Secretary of the Treasury had given a proper interpretation of the statute, in directing it to be done on the market value of the goods imported on the day of the sailing of the vessel."

The conclusion of the court was:

"That the duties upon foreign merchandise are to be computed on their value on the day of the sailing of the vessel from a foreign port."

To the same effect is *Greely* v. *Thompson*, 10 How. 223.

The period of exportation, these cases hold, was the time when the goods left the foreign port, not the time when they arrived here. The exportation was complete when the goods were carried away. Applying that principle to this case it must be said that the exportation was complete when this oil left New York on a vessel in the foreign trade. No subsequent relanding elsewhere was needed to complete it.

In *Forman* v. *Peaslee* (9 Fed. Cas. 452), the court had to ascertain the market value of an import "at the period of exportation to the United States." Certain iron had been transported from Wales to Liverpool, where it was laden on board packet ships and brought to Boston. Justice Curtis used the following language in deciding this case (p. 453):

"The natural meaning of the words 'period of exportation' is termination of exportation. The period of exportation is that point of time when the act of exportation is complete. The subject-matter of the statute is the appraisal of goods exported from a foreign country and imported into the United States. So that the inquiry in this case is, at what point of time was the exportation of this merchandise from the foreign country, England, complete? My opinion is, when it left Liverpool."

It is true that in this case the learned judge discussed the word "exportation" and said that in general it "covered only cases where property was not merely sent out of one port to another of the same kingdom, but carried to a foreign country," but the principle decided was that the exportation was complete when the goods left England. This is the principle governing this case. That the learned judge had not before him the condition which occurs here, does not detract from the force of the principle applying to this case, but it explains his failure to observe this distinction.

The complement of the present question is presented in several cases. In *Marriott* v. *Brune* (9 How. 619), it was held that where a portion of a cargo of sugar and molasses was lost by leakage on the voyage, duty should be exacted upon the quantity which arrived here and not upon the quantity shipped. The court there said (p. 632):

"The general principle applicable to such a case would seem to be, that revenue should be collected only from the quantity or weight which arrives here. That is, what is *imported*—for nothing is imported till it comes within the limits of a port. * * *

"As to imports, they therefore can cover nothing which is not actually brought into our limits. That is the whole amount which is entered at the custom-house; that is all which goes into the consumption of the country; that, and that alone, is what comes in competition with our domestic manufacturers; and we are unable to see any principle of public policy which requires the words of the act of Congress to be extended so as to embrace more." * * *

"It is also the quantity actually received here by which alone the importer is benefited. It is all he can sell again to customers. It is all he can consume. It is all he can re-export for drawback."

This case was quoted and followed in *Lawder* v. *Stone* (187 U. S. 281), where it was held that fruit, good when

shipped, but decayed and worthless on arrival, is not "goods, wares and merchandise imported into the United States."

The same principle is involved in the decision in *American Sugar Refining Co.* v. *United States* (181 U. S. 610). Sugar was exported from Brazil for importation into the United States. On leaving Brazil its value per pound was less than its value per pound on entry into the United States. It was held that the importation occurred when it came into the United States and not when it left Brazil. The essential to importation is entrance just as the essential to exportation is exit.

In the present case we are contending that the exportation occurs when the goods leave the port, and not afterward; in the cases cited, it is held conversely that the importation occurs when the goods arrive in the port, and not before.

It must be borne in mind in reading the decisions in relation to imports that the language uniformly used in the laws imposing tariff duties is articles "imported from foreign countries." See Revised Statutes, section 2503, act of October 1, 1890, 26 Stat. L. 567; act of August 27, 1894, 28 Stat. L. 509; act of July 24,1897, 30 Stat. L. 151. This differs from the language of the drawback law where the word used is "export" or "exportation" without the limitation to a foreign country, a difference which, in this case, we insist is material.

In one English case the exact question arose which occurs here. In *Muller* v. *Baldwin*, 52 L. J., Q. B. (N. S. Vol. 43), part 2, p. 164, the question was whether coal taken on board a vessel for use on the voyage was exported. Authority was given by statute to levy tolls on coals "exported from the port" by an act passed in 1872. It was shown that under preexisting statute, from 1840 to 1870, no dues were levied on such coal and no attempts

made until ten months after the act of 1872 was passed. The entire opinion is as follows:

"The question raised by this appeal is whether coals taken out of the port of Newcastle in a foreign steamer for the purpose of consumption on board in the course of a foreign voyage are liable to the coal dues of one penny per ton granted to the Tyne Improvement Commissioners by 'The Tyne Coal Dues Act, 1872, on all coals exported from the port of Newcastle. The learned judge of the county court considered that, having regard to the usage of the corporation, while the coal dues belonged to them, of treating coals taken on board for consumption as exempted from duty, the term 'exported' must receive a qualified interpretation and be taken to mean coals exported for the purpose of commerce as distinguished from what are called 'bunker coals,' that is, coals taken on board for the purpose of consumption on the voyage. We agree as to the reasonableness of making a distinction between coals taken away for sale and coals taken for the necessary use of the vessel, but we are constrained to differ from the learned judge in his construction of the act.

"There is nothing in the language of the act to show that the word 'exported' was used in any other than its ordinary sense, namely, 'carried out of the port,' and considering how easily and how extensively the privilege of storing for use may be abused, and what quantities may be carried away under the name of 'bunker coals,' we think that if it had been intended to exempt from duty coals taken on board for fuel, some limitation as to quantity would have been imposed. Nothing would have been easier than to insert a provision to that effect. We can not, however, speculate upon the intentions of the legislature, which are neither expressed in terms, nor conveyed by implication. Our duty is to interpret the words of a statute according to their plain and grammatical meaning, when, as in this case, they are not controlled by anything found in the context. Construing the words of the act upon this principle, we feel bound to hold that coals carried away from the port not in a temporary excursion, as in a tug or pleasure boat, which intends to return with more or less of the coals on board, and which may be re-

garded as always constructively within the port, but taken away for the purpose of being wholly consumed, beyond the limits of the port, are coals 'exported' within the meaning of the Act.

"We therefore give judgment for the appellant."

We note particularly here the statement of the court that "carried out of the port" is the "ordinary sense" of the word "exported."

We shall see hereafter that in the American use of the word "export," for reasons growing out of our complex governmental system, domestic commerce is excluded. This and another English case hereafter cited recognize the word in its primary and broad sense. We do not cite this case as authority for the use in American statutes of the word "export" in a domestic sense. Its value in the present case is that no discrimination is made in the use of the word "export" between goods carried to another port and those consumed on the voyage. There is nothing which makes this principle inapplicable in the definition of this word in the statutes of the United States.

These are all the cases where the point decided is the point which actually arises here. Whenever the question was clearly presented for judicial decision, it was uniformly held until the decision of the Court of Claims in this case that exportation was complete upon leaving the port and that relanding in a foreign country is not an essential of exportation.

Cases Not Involving This Distinction.

Numerous cases are found where the words "export" and "exportation" are discussed without distinct reference to the point here involved whether the exportation is complete on leaving this country.

We shall find the American cases establish two limita-

tions upon the use of the word "export" in the Constitution and in revenue statutes:

(1) It is not used in reference to domestic commerce, but always in relation to foreign commerce;

(2) Exportation in federal statutes implies an intent of permanence.

"Exports" in the Constitution.

Several cases in this court have laid down the principle that in the Constitution the word "export" is used in relation to foreign commerce and not inter-state or domestic commerce.

Brown v. *Maryland*, 12 Wheat 419, arose under that provision of the Constitution which declares:

"No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

The court decided that a tax levied by the State of Maryland on importers selling foreign articles by wholesale was a duty on imports. The argument for the State of Maryland was that this was not a tax on an import, but a tax upon an article which, having already come into the State, had ceased to be an import. Answering this argument the court supposed that Congress, forbidden by the Constitution to lay a tax on articles exported from any State, should attempt to levy a duty on merchandise found in vessels after they had left the country. This illustration was used (12 Wheat. 445):

"Or suppose revenue cutters were to be stationed off the coast for the purpose of levying a duty on all merchandise found in vessels which were leaving the United States for foreign countries; would it be received as an excuse for this outrage, were the government to say that exportation meant no more than carrying goods out

of the country, and as the prohibition to lay a tax on imports, or things imported, ceased the instant they were brought into the country, so the prohibition to tax articles exported ceased when they were carried out of the country."

The question suggested by Chief Justice Marshall is, whether the prohibition to tax exports can be evaded by taxing them after they had left the country. He says that this would be an outrage. He applies it to importation and says that equally goods imported can not be taxed unless by removal from their original packages they have become a part of the general merchandise of the State. It is not there denied that the importation is complete when the property comes into the State, or that the exportation was complete when the vessel left. It is simply said that a constitutional prohibition shall not be evaded by a transparent device. That does not involve the present question where the completion of the exportation is the immediate issue.

Chief Justice Marshall, indeed, in his opinion (p. 438) says that an article may be an export when selected for exportation even before it is laden and this view was followed in *Clarke* v. *Clarke* (5 Fed. Cas. 943; 3 Woods, 408), where a state tax was declared void as a duty on exports when levied upon goods awaiting exportation. This goes further than our present contention.

In *Woodruff* v. *Parham*, 8 Wall. 123, the question arose whether the provision of the Constitution forbidding the levying by the State "of any imposts or duties on imports or exports" rendered unconstitutional a tax levied by the State of Alabama on auction sales of goods in their original packages brought in from some other State. The court held that the word "imports" in this clause of the Constitution had no application to inter-state commerce, saying (p. 136):

"It is not too much to say that, so far as our research has extended, neither the word export, import, or impost is to be found in the discussions on this subject, as they have come down to us from that time, in reference to any other than foreign commerce, without some special form of words to show that foreign commerce is not meant."

Here it is plain that the mind of the learned judge was fixed upon the discrimination between inter-state commerce and foreign commerce. It is not fair to him to say that he decided another question which he had not in mind, particularly in the face of the statement already quoted from the same opinion, (*ante*, p. 8) disclaiming such use of judicial expressions. The question here presented, whether a shipment upon a vessel engaged in a foreign trade of goods for consumption on the vessel, is an exportation, was not in the mind of the learned judge. Yet he used language fairly including it. The commerce in the present case, while not with a foreign country, is "foreign commerce," because carried on with vessels engaged in commerce with foreign countries and more particularly because the vessels are foreign to our revenue laws.

In *Brown* v. *Houston*, 114 U. S. 622, a law of Louisiana taxed coal brought into the State from Pennsylvania and sold from the vessel in which it was brought. It was objected that this was a taxation by the State upon imports. This court held that the clause of the Constitution referred to does not relate to inter-state, but to foreign, commerce, and after quoting the two preceding cases in full, thus summarized the decision in the case of *Brown* v. *Maryland*:

"This court, however, after an elaborate examination of the question, held that the terms 'imports' and 'exports' in the clause under consideration had reference to goods brought from or carried to foreign countries alone, and not to goods transported from one State to another."

The learned judge had in mind the distinction between inter-state and foreign commerce. The distinction here drawn was not before him. Commerce with vessels in the foreign trade is foreign, not domestic, commerce. The words "foreign countries" were inadvisedly used instead of "foreign commerce."

Coming now to *Dooley* v. *United States*, 183 U. S. 151, we find that this court has held that article 1, section 9 of the Constitution, "that no tax or duty shall be laid on articles exported from any State," does not relate to articles sent from a State of the Union to Porto Rico, a domestic territory. The decision was rested upon the preceding cases. It is true that the court used this language (p. 154):

"It follows, and is the logical sequence of the case of *Woodruff* v. *Parham*, that the word 'export' should be given a correlative meaning and applied only to goods exported to a foreign country."

But did the learned judge in using the words "exported to a foreign country" to make a distinction from domestic commerce, mean to decide the present question and hold that a shipment of goods on a steamer in the foreign trade for consumption on that steamer was not an exportation? This by-path of foreign commerce was not in mind.

The case of *Fairbank* v. *United States*, 181 U. S. 283, holding that a stamp on a foreign bill of lading is a tax on articles exported, has no bearing upon the question here at issue. The court there discussed some of the cases here cited without reference to the point involved in this case.

In an English case (*Stockton Railway Co.* v. *Barrett*, 11 Clark & Fin. 600) where the question arose whether "exportation" in a statute included domestic trade, it was defined in its broader meaning of carrying out of port. The court said:

"The first question relates to the meaning of the terms 'shipped for exportation' in the Stockton and Darlington Railway Act; whether they were confined to exportation to foreign countries or included shipments of coals to be carried coastwise to other parts of the kingdom. There is not, I think, any reason for adopting the narrower interpretation. The terms are large enough to comprehend both, and, if it was a case of doubt, the rule is in acts of this nature to adopt the construction most beneficial to the public. I may further observe that from the nature of the article the home market would probably have been at least as much in the contemplation of the legislature as the foreign."

Here no constitutional question affected the interpretation, but the case was decided according to the object of the statute. This we claim should be the decisive principle here.

When the question has been presented to this court for discrimination between foreign commerce and interstate or other form of domestic commerce, the court has used language appropriate to that great question. It has not borne in mind the proportionately minute amount of foreign commerce which may be carried for consumption on vessels engaged in the foreign trade. Expressions used in the discussion of the larger question without regard to the lesser issue, should not be treated as rendering *stare decisis* the question of slight general importance now arising in this case.

A striking illustration of the fact that this particular question is quite outside the view of the judges when considering the general subject of foreign commerce, is afforded in the case of *Campbell* v. *United States* (107 U. S. 413), the leading case upon the application of the drawback law. We have already quoted from it (*ante*, p. 6) on this subject. A single sentence contains one expression absolutely favorable to the definition upheld by the

appellees, and another expression equally favorable to the appellants' definition.

The words following in italics approve the appellants' definition:

"The purpose of the drawback provision is to make duty free imports which are manufactured here and then returned whence they came or to some other foreign country *articles which are not sold or consumed in the United States.*"

The words following in italics approve the appellees' definition:

"The purpose of the drawback provision is to make duty free imports which are manufactured here and *then returned whence they came or to some other foreign country*— articles which are not sold or consumed in the United States."

This illustrates the futility of quoting as authority on a particular question the expression of a judge who was making a general statement. The Court of Claims, with a certain naivete, says of this quotation (Rec. p. 12): "But for the concluding part of the paragraph the decision would cover this case." We may add that but for the language preceding the concluding part of the paragraph, the opposite is equally true.

"Exportation" Involves Permanence.

It is also generally held that, where goods leave the United States only temporarily, the owner intending to reland them in this country, there is no exportation, because the intent is absent. The courts hold the purpose of permanent absence essential to the exportation.

In the case at bar, that intent exists, since there was no intention to return the goods, but they were consumed on the voyage.

In *United States* v. *The Forrester*, 25 Fed. Cas. 1147; Newb. 81, the question was whether importation occurred where goods were laden at one American port on a vessel bound for another American port which stopped at a Canadian port for further cargo, *en route*. It was held that there was no importation into the United States, this decision being based on the ground that "export" and "import" in the revenue laws are both used in a permanent sense. The court never had before it the discrimination here involved. That was quite outside its consideration. Yet in the discussion, the broader meaning of "export" is recognized (p. 1152):

"We 'import' teas from China, wines from France. We 'export' cotton, tobacco, pork and wheat The one term signifies etymologically, 'to bring in,' the other 'to carry out.'"

In *Kidd* v. *Flagler*, it was held below (54 Fed. Rep. 67) that goods taken out of the United States even with a purpose to return them were exported, but the court above (78 Fed. Rep. 341) held that no exportation occurred within the sense of § 3330, Revised Statutes, because the statute itself made an intentional relanding criminal. The decision of that case was on the particular statute involved. The term "exportation" was given the meaning required by that statute. This is not at all inconsistent with the contention made in this case. It is striking that in the very definition of "exportation" made by the court below (54 Fed. Rep. 369) the court cites two dictionary meanings of the term "export," one of which ignores the question of destination and the other includes it:

"The dictionary meaning of the term 'export' is as follows:

"'To carry from a state or country, as wares in com-

merce.'—Webst. Dict. 'To send goods and merchandise from one country to another.'—1 Bouv. Law Dict. 502; 1 Rap. & L. Law Dict. 487."

Thus it is seen that the court never had in mind the discrimination which is the very issue in the present case.

The court above recognizes the broad meaning of the word "export" for which we contend in its definition quoted by the Court of Claims (rec. 11):

"Ordinarily goods are exported when they are carried out of the country for the purpose of being transferred to a foreign situs. The intent characterizes the act and determines its legal complexion."

"A foreign situs" is the essential to export, not a foreign country, as is sometimes inadvisedly said. In the present case a vessel in the foreign trade is a foreign situs as much as a foreign country, since it is equally foreign to our custom laws.

Kennedy v. *United States*, 95 Fed. Rep. 127, is in the same line, holding that there is no exportation where bags are carried during successive voyages from one side of the ocean to the other, alternately filled and emptied when landed on either side. This likewise does not affect this case since here the goods were consumed on the voyage.

The Result of the Cases.

The cases may be thus summarized:

(1) When the issue in this case—"Is exportation complete on leaving the port?" has been presented to courts, the answer has been that it is, if the intent exists to keep the goods out of the country.

(2) The constitutional and statutory use of the word "export" relates to foreign, as distinguished from domestic, commerce.

(3) Where the issue in this case has not been under

consideration courts have often used the phrase "commerce with foreign countries" as equivalent to "foreign commerce."

The Statute and the Constitution.

"Framed pursuant to the paramount law, the statutes must be construed with the Constitution and all together as one law."

This correct principle, forcibly stated by the Court of Claims in the opinion below (Rec. 10), is applied against the claimant; rightly viewed, it is greatly in claimant's favor.

The drawback law in its relation to this case is closely connected with two frequently quoted paragraphs of the Constitution. By article 1, section 9, the power of Congress is abridged in regard to exports:

"No tax or duty shall he laid on articles exported from any State."

By section 10 of the same article:

"No State shall, without the consent of Congress, lay any imposts or duties on imports or exports."

These provisions relate to external and not to domestic commerce, we have seen. Can it be doubted, that if the State of New York attempted to lay a duty on the oils shipped out of the port of New York for use on vessels in the foreign trade, the oil refiners of New Jersey would successfully invoke the protection of the Constitution? Congress is equally forbidden to lay any such tax.

It is true that this precise question has never been determined here, but the reason for forbidding to either State or United States the right to tax exports intended for foreign ports applies to those intended for ocean consumption. That reason is stated by Madison as quoted

by Justice Miller in *Woodruff* v. *Parham* (8 Wall. 135), as follows:

"Some States export the produce of other States. Virginia exports the produce of North Carolina; Pennsylvania those of New Jersey and Delaware; and Rhode Island, those of Connecticut and Massachusetts. The exporting States wished to retain the power of laying duties on exports to enable them to pay expenses incurred. The States whose produce was exported by other States, were extremely jealous lest a contribution should be raised of them by the exporting States, by laying heavy duties on their own commodities."

No distinction can be made between forbidding the State of New York or the United States to tax oil manufactured in New Jersey when exported from the port of New York to England, and that same oil when exported from the same port for use on a vessel engaged in the English trade. The constitutional prohibition against taxation of exports must therefore apply to any tax on oil shipped for consumption on the voyage as in this case.

The shipments included in this case being thus within the constitutional protection as exports, the statute must be construed with the Constitution as one law and in the same extensive meaning.

The drawback law while primarily passed as a complement to the protective system is also intended to carry out the principle laid down in these articles of the Constitution. Exports, these say, are to be free from tax. Manufactured articles, when exported, are, the statute says, to be made free from import taxes on their materials. Thus the export becomes entirely free from tax. There is no constitutional obligation to do this, but it is within the constitutional principle.

The purpose of the Constitution, fully developed in the

statute, is that articles leaving this country in the course of trade shall not be taxed. No discrimination can be made in enforcing the Constitution between goods exported for use on the voyage and for relanding in a foreign country. The drawback statute, designed to carry to its fullest extent the spirit of this constitutional provision, should be enforced as broadly and the imported materials made duty free whether the export is for use on the ocean or on foreign soil.

Former Legislation.

Prior legislation on this subject is all consistent with the meaning of the word "exportation" in this statute as demanded by the claimant. Some of the statutes are referred to in the opinion of the Court of Claims (Rec. p. 9).

The first drawback act of Congress was that of March 2, 1799, section 75 (1 Stat. L. 680), which appears, modified in some important particulars, as sections 3015, 3016 of the Revised Statutes. The act is as follows:

"*And be it further enacted*, That a drawback of duties, as prescribed by law shall be allowed and paid on all goods, wares or merchandise imported into the United States, in respect to all such goods, wares and merchandise, whereupon the duties shall have been paid, or secured to be paid, as, within twelve calendar months after payment made, or security given, shall be *exported to any foreign port or place*, other than the dominions of any foreign State immediately adjoining to the United States, either from the district of original importation, or from certain other districts; and all duties, drawbacks and allowances which shall be payable, or allowable, on any specific quantity of goods, wares or merchandise, shall be deemed to apply in proportion to any greater or lesser quantity: *Provided*, that no goods, wares, merchandise imported, shall be entitled to a drawback of the duties paid, or to be secured thereon, unless the duties so paid or secured

thereon shall amount to fifty dollars at least; nor unless they shall be exported in the original casks, cases, chests, boxes, trunks or other packages, in which they were imported, without diminution or change of the articles which were therein contained, at the time of importation, in quantity, quality or value, necessary or unavoidable wastage or damage only excepted."

Section 81 of this act makes provision for a form of bond to be given upon the reshipment of imported goods for the benefit of drawback under this statute. The condition of the bond is as follows (1 Stat. L. 689):

"The condition of this obligation therefore is such, that if the aforesaid recited merchandise, or any part thereof, *be not relanded in any port or place within the limits of the United States*, and if the certificates and other proofs required by law of the delivery of the same at the aforesaid port of *or at any other port or place without the limits of the United States*, as aforesaid, shall be produced at this office, within from the date hereof, then this obligation shall be null and void, but otherwise to remain in full force and virtue."

Attention is asked to the fact that the bond is discharged if the goods are not relanded in the United States and are delivered at any "port or place without the limits of the United States." The same section further provides (1 Stat. L. 690) for certificates to be given by the consignee to the consul or agent of the United States and the two principal officers of the vessel. Then it proceeds as follows (p. 690):

"And in cases of loss by sea, or by capture or other unavoidable accident; or when, from the nature of the trade, the proofs and certificates before required are not, and can not be procured, the exporter or exporters shall be allowed to adduce to the collector of the port of exportation such other proofs as they may have, and as the nature of the case will admit; which proofs shall, with

a statement of all the circumstances attending the transaction, within the knowledge of such collector, be transmitted to the comptroller of the treasury, who shall have power to allow a further reasonable time for obtaining the proofs aforesaid; or if he be satisfied with the truth and validity of the proofs adduced, to direct the bond or bonds of such exporter or exporters, to be cancelled."

We submit that under this, the original drawback law, a shipment of foreign goods on a vessel engaged in the foreign trade for the purpose of use on that vessel, was included within the benefit of the drawback because the exportation, while not for a foreign port, was for a foreign place, viz., the high seas. The condition of the bond required by the statute was that the goods "be not relanded in any port or place within the limits of the United States," and a general provision was made that where the certificates obtainable upon relanding "could not from the nature of the trade" be procured, such other proofs might be adduced as the nature of the case would admit.

It is difficult to see how any law could be better made to include such a case as the present or more fully designed to accomplish the general purpose of the act to free from duty imported goods brought into the United States and taken out again in the condition in which they were imported, not for relanding but for use where the customs laws of the United States have no authority.

The drawback law was not materially modified from that time until the act of August 5, 1861. Section 4 of that act (12 Stat. L. 293) is as follows:

"That from and after the passage of this act, there shall be allowed, on all articles wholly manufactured of materials imported, on which duties have been paid *when exported*, a drawback, equal in amount to the duty paid

on such materials and no more, to be ascertained under such regulations as shall be prescribed by the Secretary of the Treasury: *Provided*, that ten per centum on the amount of all drawbacks, so allowed, shall be retained for the use of the United States by the collectors paying such drawbacks, respectively."

With some unimportant changes this is continued as Revised Statutes, section 3019.

In carrying section 75 of the act of 1799 into the Revised Statutes, a change took place in its terms, of material import in the bearing of the act on this case, for the phrase "to any foreign port or place" was abbreviated to read "to any foreign port."

The form of bond was not carried into the Revised Statutes, but the Secretary of the Treasury has preserved this literally in the various editions of the customs regulations from that date to this, applying it with the slightest necessary changes even to the drawback on manufactured articles under later laws. See the Customs Regulations of 1892, now in force, articles 746 and 762. The portion of section 81, above quoted, dispensing with certificates of relanding, was carried into the Revised Statutes as section 3047.

The difference between these two acts is that the first relates to goods exported in the condition in which imported; the second to "articles wholly manufactured of materials imported."

A further extension of this principle was made in section 25 of the tariff act of October 1, 1890 (26 Stat. L. 617) re-enacted as section 22 of the act of August 28, 1894 (28 Stat. L. 551) and section 30 of the act of July 24, 1897 (30 Stat. L. 211).

Under these acts a drawback was paid on *exportation* of imported materials "used in the manufacture of articles manufactured or produced in the United States" without

regard to the manufacture being wholly of imported material (see this section, *ante* p.)

The close relation of the drawback system to the protective tariff system is seen by recalling that the drawback law of 1861 was a part of the act known as the Morrill act and that of 1890 as the McKinley act, the two acts bearing the names of the most distinguished advocates of the protective system.

The earliest drawback act, that of 1799, uses the words "exported to any foreign port or place." The second act says "exported." The three later acts say "on exportation." By error of the revisers, the first act was re-enacted to read "to any foreign port." All the original acts alike are broad enough to include the present case where the goods were consumed on the high seas—a foreign place, but not a foreign port. It is only in the revision that a limited term is by error introduced which would exclude the shipment of stores for use on the voyage.

No sound rule of statutory construction can import into the third and later acts the restrictive term not used in the first act, but by accident finding lodgment in the revision. Rather must it be supposed that Congress in extending the drawback system to manufactured articles deliberately used broad terms to make the system as extensive as the needs of manufactures and commerce. On no proper principle of interpretation can it be said that the broad words of later statutes can be restricted by the narrow term of a single accidental enactment.

Another system designed to make free of tax imports manufactured, but not consumed, in the United States is the manufacturing bonded warehouse system in its various forms under different statutes. Its object is the same as the drawback system. Throughout the legislation relating to that system from its origin in the act of October 1, 1890, the words "export" and "exportation" are used without any words of limitation to foreign countries.

Thus the act of 1890, section 10 (26 Stat. L. 614), provides for the manufacture of articles composed of domestic spirits "intended for exportation" without payment of internal revenue tax.

Section 14 of the same act (26 Stat. L. 615) provides for machinery imported into the United States for repair "to be withdrawn and exported" free of duty. This is re-enacted in section 13 of the act of August 28, 1894 (28 Stat. L. 550), and section 19 of the act of July 24, 1897 (30 Stat. L. 209).

Under section 24 of the act of 1890 (26 Stat. L. 617), imported metals may be smelted without payment of tax if "intended to be exported." This is re-enacted in section 21 of the act of 1894 (28 Stat. L. 551), and in section 29 of the act of 1897 (30 Stat. L. 210).

The act of July 24, 1897, section 15 (30 Stat. L. 207), provides further for bonded manufacturing warehouses, re-enacting section 9 of the act of 1894 (28 Stat. L. 548).

The absence from all these acts of any provisions requiring the exportation to be "to a foreign country" as a condition of freedom from tax is a complete answer to any inference from the accidental inclusion in the Revised Statutes of the restrictive term.

The drawback system, a corollary of the protective system, designed to make domestic manufactures of imported materials duty free for foreign markets, has now assumed great breadth and scope. The construction of the acts relating to it should be characterized by the same broad spirit as their enactment.

Departmental Construction.

It is found as a fact that bills of lading are required by the regulations of the department, but none could be furnished in this case because none are issued for ships' stores. The Court of Claims (Rec. 9) admits that all de-

partmental regulations requiring bills of lading, if not authorized by law, would be void (*Campbell* v. *United States*, 107 U. S. 413; *Morrill* v. *Jones*, 106 U. S. 466; *French* v. *Fyan*, 93 U. S. 169; *Railroad Company* v. *Smith*, 9 Wall. 95), but says that this is a departmental construction entitled to very great respect.

The act of 1861, embodied in Revised Statutes, § 3019, was very limited in its scope and we are not able to find until November 22, 1889, any decision of the Treasury Department bearing upon the question of drawback of ships' stores. On that date, it appears from the official publication, "Synopsis of Treasury Decisions," No. 9733, that the following decision was made.

"The Department being informed that in some cases sugar and cordage intended for use on departing vessels have been entered for drawback as articles exported, it is hereby directed that upon all exportations of sugar, in less quantities than five barrels or ten half-barrels, and of cordage on which the amount of drawback is less than $100, the person issuing the bill of lading shall be required to state thereon that from his personal knowledge the sugar or cordage therein described is not intended to be used on the outward voyage, and that the bill of lading has been issued therefor in good faith to secure the transportation of said sugar or cordage to the port of destination, and its unloading and delivery at said port."

This weakens the argument from continued contemporaneous construction because it shows that the practice under § 3019 had not been uniform. The Secretary, in his decision, stops an existing practice, which had been followed for how many years we do not know. That this practice was consistent with sections 75 and 81 of the act of 1799 and the conditions of the bond prescribed by that statute and the Treasury Regulations has been already seen.

The act of October 1, 1890, was the first act extending

the drawback law to a widely varied class of articles and the first decision under this act was that of December 28, 1892, published in the same official publication as No. 13,563. This petition was filed in January, 1898, covering entries made in 1895, 1896, and 1897. There was thus no very extensive official construction of the act of 1890 and its successors of 1894 and 1897. But even here the Treasury Department admitted exceptions which, in effect, confessed the principle for which we are contending.

Treasury Decision 14,190, of July 14, 1893, related to a cargo of case oil shipped for India. Drawback was paid on the tin cases. The vessel reached the port of St. Thomas in a disabled condition and returned to the United States with the tin cases on board, damaged and valueless. The drawback, in accordance with the practice, had been paid on the departure of the vessel, under bond to produce a relanding certificate. The collector, upon reimportation of the damaged cases, insisted upon payment of duties equal to the drawback originally allowed (Act of October 1, 1900, par. 493, 1 Supp. R. S. 848). The decision of the Department against this was in the following terms:

"The tin cases which were brought back by the disabled vessel in this instance are represented to be in such condition as unfits them for further use. Indeed, the owner offers to assist in their total and final destruction, and says they would not pay for the costs of sale. Their exclusion from the markets of this country is as complete as if they were landed upon a foreign shore or sunk in mid-ocean. They no longer represent the commodity which was the subject of drawback."

Here was an exportation without importation to a foreign country, the very principle now contended for.

The Treasury Department has applied section 3047, Revised Statutes, taken from section 81 of the act of

March 2, 1799, to all drawbacks, whether under the acts of 1799, 1861 or the later series and has cancelled bonds on proof of "loss at sea." All that is asked here is to apply another provision of section 3047, Revised Statutes, and allow the drawback on proof of the consumption of the exported goods on the vessel, since "from the nature of the trade the proofs and certificates before required are not, and cannot be procured."

Having shown that the practice varied up to 1889; that but a few years after the act of 1890 was passed this question was raised; that in 1893 the principle was admitted in claims upon damaged goods, and that the principle has been uniformly applied in reference to goods lost at sea, the argument from continued contemporaneous construction becomes of very slight weight.

Analogous Words.

An important and interesting light upon the meaning of the words "export" and "import" is thrown by the undoubted meaning of the corresponding words "emigrant" and "immigrant." The word "emigrant" requires a country of departure and usually implies a country of arrival. The word "immigrant" requires a country of arrival and usually implies a country of departure. Thus an emigrant usually becomes an immigrant and an immigrant has usually been an emigrant. This is not always true. An emigrant dying at sea never becomes an immigrant. A baby born at sea becomes an immigrant although he was never an emigrant.

The distinction to be drawn here as in the case of the words "export" and "import" is the distinction between the necessary quality of the terms and their usual incidents. It is this discrimination that we ask the court to make in this case and hold that the oil which left the United States was none the less an export from the United

States although it never became an import to a foreign country.

Conclusion.

An Unreasonable Result Avoided.—The claimant could have obtained this drawback by shipping the oil to England for sale there. Once there, it could have been sold to the very steamers which actually used it and then been used by them. Is it reasonable to suppose that Congress meant to require this circumlocution by American manufacturers, with consequent increase of expense, when shipment as ships' stores in the foreign trade is within a well-recognized meaning of the word "exportation"?

The Statute's Purpose Accomplished.— The question is: Do the words of the statute warrant payment of drawback under such conditions? It is clear that they do. The primary and well-recognized meaning of the words "export" and "exportation" permit the statute, with strict regard to its terms, to be read with a meaning which will give the relief here asked, directly in line with the general object of the law. There should then be no hesitation in giving the words this interpretation in preference to one which limits the remedial purpose.

Constitution and Statute Harmonious.—The Constitution forbids taxation of "exports"; the reason of the constitutional prohibition extends to such a shipment as here made, as well as to shipments to foreign countries. There should be a like construction of Constitution and statutes recognizing the shipment and use here as within the protection of both.

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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE SWAN AND FINCH COMPANY, APPELLANT,
v.
THE UNITED STATES. } No. 258.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

LOUIS A. PRADT,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE SWAN AND FINCH COMPANY, APPELLANT,
v.
THE UNITED STATES. } No. 258.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The claimant made application under the drawback provisions of the customs act of August 28, 1894 (28 Stat. L., 551), for refunding of duties paid by it upon imported materials which it had used in the manufacture of lubricating oil, which oil was afterwards sold by it at the port of New York to vessels engaged in foreign trade for use on board upon their voyages in such trade. The claim was disallowed by the Treasury Department on the ground that the oil upon which the drawback was claimed was not an exportation—had not been exported—within the

meaning of the drawback section under which the claim was made. Thereupon suit was brought upon the claim in the Court of Claims, where the ruling of the Treasury Department was sustained. From the judgment of the Court of Claims dismissing its petition the claimant has appealed to this court, alleging error of the Court of Claims in not holding that the oil sold by it to a vessel in the foreign trade to be consumed on such vessel in the course of its voyage was an exportation and embraced in the provisions of the drawback law.

ARGUMENT.

It will be seen from the foregoing statement that there is but a single question to be determined on this appeal. That question is, comprehensively, Are ships' stores sold to vessels engaged in the foreign trade *exportations* in the sense that the word is used in the drawback provision of our tariff laws? Obviously this question can only arise because of the fact that the word "exportation" has a broad, general meaning, and also a restricted and technical meaning; so that the inquiry must be, in which sense was the word employed when used in the statute under consideration.

At the outset of the inquiry we find guidance in the following rule of interpretation:

> The first and most elementary rule of construction is that it is to be assumed that the words and phrases are used in their technical meaning, if they have acquired one. (Endlich upon Interpretation of Statutes, sec. 2.)

This "elementary rule of construction" has been frequently referred to in judicial decisions.

> In the enactment of laws, when terms of art or peculiar phrases are made use of, it must be supposed that the legislature had in view the subject-matter about which such terms or phrases are commonly employed. (*Ex parte Hall*, 1 Pickering, 261.)

The court there had under consideration a statute containing the word *supersede*, and in construing the same assigned to the word its military instead of its general meaning.

> It is text-book law that terms of art in a statute or a deed are to be taken in their technical sense, because they have a definite meaning, which is supposed to have been understood by those who were or ought to have been learned in the law. (*Brockett* v. *O. and P. R. R. Co.*, 14 Pa. State, 243.)
>
> When a word used in a statute has a fixed technical meaning the legislature must be understood as intending to employ it in that sense, unless there be something in the context which indicates an intention to use it in a different sense. (*State* v. *Smith*, 5 Humphrey (Tenn.), 396.)

The construction of the word *merchant* was in question in this case, and it was held not to include every person who buys and sells, but only those who traffic in the way of commerce or trade and make it their living to buy and sell, although in the broadest sense the word means one who buys or trades in anything.

This rule has found especial application by this court in the interpretation of statutes relating to the revenue laws.

In *American Net and Twine Company* v. *Worthington*, 141 U. S., on page 471, the court said:

> It is a cardinal rule of this court that, in fixing the classification of goods for the payment of duties, the name or designation of the goods is to be understood in its known commercial sense, and that their denomination in the market when the law was passed will control their classification without regard to their scientific designation, the material of which they may be made or the use to which they may be applied.

Citing *Two Hundred Chests of Tea* (9 Wheat., 430, 438), and a number of subsequent decisions of this court.

Applying this rule the court held, page 474, that the goods in dispute should be classed as seines and not thread; that under the circumstances the article was to be classified by its specific designation rather than under a general description.

The same general rule has also been announced in *Maddock* v. *Magone* (152 U. S., 368), and in *De Jonge* v. *Magone* (159 U. S., 569).

THE WORD "EXPORTATION" HAS A WELL-KNOWN RESTRICTED TECHNICAL MEANING.

Whilst the word "exportation" has undeniably a general meaning of simply carrying out of a country or port, it is equally plain that it has also a limited and special or technical meaning, in which sense the word is most commonly used; that is to say, in relation to

trade with other countries—in other words, to foreign commerce. This is more especially true of the word as employed in the drawback section, where the term is used as the direct converse of "importation;" and as to the latter word there can be no dispute that it implies the bringing into this country of goods from a foreign country. Thus the statute has application to the case of goods manufactured in whole or in part of materials *imported* from foreign countries and afterwards *exported*. This exportation, it would seem as a natural sequence, implies the sending back of the goods to foreign countries. As said in the case of Campbell, 107 U. S., 413:

> The purpose of the drawback provision is to make duty-free imports which are manufactured here and then returned whence they came—or to some other foreign country—articles which are not sold or consumed in the United States.

DEFINITION IN LAW DICTIONARIES.

The definition of the words "export" and "exportation" given in law dictionaries bears out the foregoing statement.

ANDERSON.

Export: To carry away or send out of the country.

Exports: Merchandise sent from one country to another.

BLACK.

Export: To send, take, or carry an article of trade or commerce out of the country. To transfer merchandise from one country to another in the course of trade; to carry out or convey goods by sea.

BOUVIER.

Exportation: In common law, the act of sending goods and merchandise from one country to another.

ENGLISH (1899).

Exportation: Shipping of native commodities out of one country into another.

JACOBS–TOMLINS.

Exportation: The shipping or carrying out of the native commodities of England for other countries.

RAPALJE AND LAWRENCE.

Exportation: The act of sending or carrying goods and merchandise from one country to another.

WHARTON.

Exportation: That part of foreign commerce which consists in sending out goods for sale to foreign countries.

Exports: The goods or produce which are sent abroad.

So, also, the following general dictionaries:

CENTURY.

Export: To take or carry away. "They export honor from a man." Specifically, to send to a distant point, as commodities sent for sale or exchange to other countries or places.

Exporter: Specifically, one who ships goods, wares, or merchandise of any kind to a foreign country or distant place for sale.

STANDARD.

Exportation (*commercial*): That act or practice of exporting or of sending out commodities from one country to another for traffic or sale.

Export: That which is exported; in general, goods or any article of trade or merchandise sent from one country to another; properly, and as used in the United States Constitution, goods sent to a foreign country.

WEBSTER.

Export: To carry out or send abroad, or out of a country, especially to foreign countries, as merchandise or commodities in the way of commerce; the opposite of import.

JUDICIAL DEFINITION.

The words "imports," "exports," and "exportation" have frequently received judicial definition, and in every case in which the words were employed in their commercial sense they have been held to apply to foreign commerce, to goods shipped from one country to another in foreign trade, and in no such instance were the words given their general meaning.

This court was first called upon to define the word "imports," as used in the Constitution, in the case of *Brown* v. *Maryland* (12 Wheat., 419). The court had under consideration the provision of the Constitution that "no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws," the specific question being whether the

legislature of a State can constitutionally require the importer of foreign articles to take out a license from the State before he shall be permitted to sell a bale or package so imported. Chief Justice Marshall, in delivering the opinion of the court, said (p. 427):

> What, then, are "imports?" The lexicons inform us they are "things imported." If we appeal to usage for the meaning of the word, we shall receive the same answer. They are the articles themselves which are brought into the country.

And further on (p. 442):

> It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, in the original form or package in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution.

And again (p. 445):

> In support of the argument that the prohibition ceases the instant the goods are brought into the country, a comparison has been drawn between the opposite words, export and import. As to export, it is said, means only to carry goods out of the country; so to import, means only to bring them into it. But suppose we extend this comparison to the two prohibitions.

> The States are forbidden to lay a duty on exports, and the United States are forbidden to lay a tax or duty on articles exported from any State. * * * Now, suppose revenue cutters were to be stationed off the coast for the purpose of levying a duty on all merchandise found in vessels which were leaving the United States for foreign countries, would it be received as an excuse for this outrage were the Government to say that exportation meant no more than carrying goods out of the country, and as the prohibition to lay a tax on imports, or things imported, ceased the instant they were brought into the country, so the prohibition to tax articles exported ceased when they were carried out of the country.

The logic of the case in its application to the definition of the word "export" is clearly that as importation does not cease until the imported article has been incorporated with the mass of property in the country, so exportation does not cease until the exported article has reached its foreign destination.

The constitutional meaning given to the words "imports" and "exports" in *Brown* v. *Maryland*, and the fact of their necessary correlation, have been adopted and reiterated by this court in frequent decisions since then. In *Woodruff* v. *Parham* (8 Wall., 123, 131), the court said:

> The words "imports and exports" are frequently used in the Constitution. They have a necessary correlation. * * * In the case of *Brown* v. *Maryland* the word "import," as used in the clause now under consideration, is defined,

both on the authority of lexicons and of usage, to be articles brought into the country.

And on page 136:

It is not too much to say that, so far as our research has extended, neither the word "export," "import," or "impost" is to be found in the discussions on this subject as they have come down to us from that time, in reference to any other than foreign commerce, without some special form of words to show that foreign commerce is not meant.

It was decided by this court in the case of *Woodruff* v. *Parham* (8 Wall., 123), that the term "imports" as used in that clause of the Constitution which declares that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, does not refer to articles carried from one State into another, but only to articles imported from foreign countries. * * * This court, however, after an elaborate examination of the question, held—*Brown* v. *Maryland* (12 Wheaton, 419)—that the terms "imports" and "exports" in the clause under consideration had reference to goods brought from or carried to foreign countries alone, and not to goods transported from one State to another. (*Brown* v. *Houston*, 114 U. S., 628–629.)

In *Woodruff* v. *Parham* (8 Wall., 123) it was held that the words "imports" and "exports," as used in the Constitution, were used to define the shipment of articles between this and a foreign country and not that between the States. (*Fairbank* v. *United States*, 181 U. S., 294.)

In the recent "Insular Cases" the court uses the following language:

> While the words "import" and "export" are sometimes used to denote goods passing from one State to another, the word "import," in connection with the provision of the Constitution that "no State shall levy any imposts or duties on imports or exports," was held in *Woodruff* v. *Parham* (8 Wall., 123) to apply only to articles imported from foreign countries into the United States. * * * .
>
> It follows, and is the logical sequence of the case of *Woodruff* v. *Parham*, that the word "export" should be given a correlative meaning, and applied only to goods exported to a foreign country. (*Dooley* v. *United States*, 183 U. S., 153–154.)

And in *De Lima* v. *Bidwell* (182 U. S., 176):

> The question involved in this case is not whether the sugars were importable articles under the tariff laws, but whether, coming as they did from a port alleged to be domestic, they were imported from a foreign country—in other words, whether they were *imported* at all as that word is defined in *Woodruff* v. *Parham* (8 Wall., 123, 132).

The decisions of other Federal courts are equally definite and uniform upon this question.

The term "export" was defined by the circuit court for the northern district of New York, in the case of *Kidd* v. *Flagler* (54 F. R., p. 367), as follows:

> The dictionary meaning of the term "export" is as follows: "To carry from a state or country,

as wares in commerce."—Webster's Dictionary. "To send goods or merchandise from one country to another."—1 Bouv. Law Dict., 502; 1 Rap. and L. Law Dict., 487. The term is the direct converse of "import," which means "to bring into a country merchandise from abroad."

An importation means "a bringing into some port, harbor, or haven with an intent to land the goods there." (*The Mary*, 1 Gall., 206.) Importation takes place when the vessel arrives at a port of entry intending there to discharge her cargo. (*United States* v. *Vowell*, 5 Cranch, 368; *McLean* v. *Hager*, 31 Fed. Rep., 602; *United States* v. *10,000 Cigars*, 2 Curt., 436; *Arnold* v. *United States*, 9 Cranch, 104; *Meredith* v. *United States*, 13 Pet., 486; *Clarke* v. *Clarke*, 3 Woods, 408; *Barrett* v. *Railroad Co.*, 2 Man. and G., 155; *Two Thousand Tin Cans*, 7 Ben., 34.)

The same case was heard on appeal in the circuit court of appeals for the second circuit, reported in 78 F. R., page 341. The appellate court reversed the judgment, but approved the general definition of the word "export" given by the court below in the following language:

> Ordinarily, goods are exported when they are carried out of the country for the purpose of being transferred to a foreign situs. Goods en route from one place to another in the United States are not exported merely because while in transit in cars or vessels they may be temporarily outside the boundaries or within the boundaries of a foreign country. Conversely,

> goods are imported when they are brought within the country with intent to land them here. The *intent* characterizes the act and *determines its legal complexion.* (*United States* v. *Vowell*, 5 Cranch, 368 *The Mary*, 1 Gall., 206, Fed. Cas. No. 9183; *The Boston*, 1 Gall., 239, Fed. Cas. No. 1670.) In the absence of language in the statute indicating a contrary intention, it would be assumed that in section 3330 Congress used the term "exportation" in the sense thus attributed to it.

In *United States* v. *Forrester* (25 Fed. Cases, p. 1152) is found a discussion of the word "import:"

> The term used is "import," and legislation employed that term in its commercial sense, which is to bring from a foreign jurisdiction into this jurisdiction merchandise not the product of the country. Its commercial meaning is directly contrary to the term "export." Both phrases have a technical meaning in the law. We "import" teas from China, wines from France. We "export" cotton, tobacco, pork, and wheat.

INTENT TO RELAND IN A FOREIGN PORT OF THE ESSENCE OF IMPORTATION OR EXPORTATION.

It is clearly deducible from the foregoing decisions that the essential element of an importation or an exportation, in its constitutional sense, is the intent to reland the goods in some foreign port; indeed, this principle has been expressly announced by the courts.

> To constitute an importation there must be a voluntary arrival within the limits of the port of entry with the intent to unlade the goods there. (*The Mary*, 1 Gall., 206.)

> An importation is complete when the goods are brought within the limits of the port of entry with the intention of unladening them. (*United States* v. *10,000 cigars*, 2 Curtis, Cir. Ct. R., 437.)

In *McLain* v. *Hager* (31 F. R., 604) the court says of opium shipped on board a steamship from Honolulu to Panama by way of San Francisco, intended to be transferred without landing to another steamer at San Francisco running to Panama, and which was so transferred at San Francisco: "It was not imported into the United States in any proper sense of the term."

Foreman v. *Peaslee*, Monthly Law Rep., vol. 21, p. 273.

This was a case in which railroad iron exported from England to this country was shipped from Wales to Liverpool on coasting vessels, and at Liverpool laden on packet ships en route to Boston. In appraising the iron the appraisers at Boston fixed its market value at the time of its departure from Liverpool, against the protest of the importer that the value of the iron at Wales should govern, and thus the question was raised in the case as to when the exportation began. In considering this question, Curtis, J., delivering the opinion of the circuit court, said (p. 274):

> The natural meaning of the words "period of exportation" is termination of exportation. The period of exportation is that point of time when the act of exportation is complete. The subject-matter of the statute is the appraisal of goods exported from a foreign country and im-

ported into the United States. So that the inquiry in this case is, At what point of time was the act of exportation of this merchandise from the foreign country, England, complete? My opinion is, when it left Liverpool. Its transportation coastwise from one English port to another was not an exportation from England. Until the vessels of Train & Co having it on board were cleared and sailed from Liverpool, there was no completed act of exportation. Until that time the property was under the control of the British Government, whose order could have arrested and detained it within that country, and whose control over it would have been unaffected by the fact that it had been brought from Cardiff and Newport for the purpose of being sent to the United States.

The plaintiff's counsel relied on the case of *Barrett* v. *The Stockton and Darlington Railway Co.*, reported in 2 Man. & Gr., 134, and on error in 3 M. and G., 956, and 11 Cl. and Fin., 590. But that case tends to support the construction which I place on the act of Congress. It is true it was decided in all the courts that under the act of parliament then in question, exportation might mean simply carrying out of a port; and as between the public and a corporation claiming a toll, and upon the special provisions of that act, it was held it did mean so, but it was admitted that its more usual sense was a more restricted sense, and covered only cases where property was not merely sent out of one port to another of the same kingdom, but carried to a foreign country.

> And that such is the meaning of the word exportation in this act of Congress can admit of no doubt, for it can have no reference to transportation from one port to another of the same country; its language and its object and its subject-matter all confine the exportation here spoken of to an exportation from some foreign country to the United States.

So controlling a fact, indeed, is the intent to reland that it has been held that logs which were the property and in possession of persons engaged exclusively in exporting timber from the United States to foreign countries (which had been purchased from citizens of Georgia for the purpose of exportation, were in the port of Georgia and of the United States awaiting shipment, and not on shipboard, which had been inspected according to the laws of Georgia and were afterwards exported by the owners) were, while awaiting shipment and still on land, exports within the meaning of section 1, article 10, of the Constitution of the United States. (*Clark & Co.* v. *Clark et al.*, 3 Wood's Reports, 408.)

EXCEPTIONAL CASES.

Counsel for claimant have called attention to two English cases in which the word "exportation" was given its broad, general meaning, instead of the more restricted meaning in which the word is employed when used in its commercial sense. In neither of these cases did the statute under consideration have relation to customs duties, nor to the ordinary commercial use of the term "exportation," but in each instance the

statute was a special one, and the circumstances were such as to make the case exceptional; so that the cases, so far from being out of harmony with the rule of construction which is here contended for, are, in reality, exceptions of a nature which go to prove the rule rather than to contradict it. The first of these cases is *Barrett* v. *Stockton R. R. Co.* (Court of Common Pleas, 2 M. & G., 134.)

In this case the defendant railroad company was, by act of Parliament, limited to a much lower rate for freight upon coal carried on its road to the port of Stockton-on-Tees and shipped from that port for exportation than upon coal carried by it and not so shipped, and the question in the case was whether this act was to be construed as applying only to coal shipped for some port outside of Great Britain. It was conceded on all hands that the term "export" had a technical meaning as used in relation to customs duties, and the only question was whether this technical meaning or its broad, general meaning should be applied in the particular case. It was held by the court that the word as used in the particular act under consideration was not restricted to foreign commerce, but included also the carrying of commodities from one port to another within the kingdom (p. 163), and, further, that if the word was to be taken as ambiguous in its meaning, it should be held to include exportation to domestic ports on the general principle laid

down by Lord Ellenborough in *Gildart* v. *Gladstone* (1 East., 675):

> If the words would fairly admit of different meanings, it would be right to adopt that which is more favorable to the interest of the public and against that of the company, because the company in bargaining with the public ought to take care to express distinctly what payments they are to receive, and because the public ought not to be charged unless it is clear that it was so intended.

The judgment of the court in this case was affirmed on appeal to the House of Lords. (11 Clark and Finnelly, 590.)

In discussing the case on this appeal, the Lord Chancellor said (p. 601):

> The first question relates to the meaning of the terms "shipped for exportation," in the *Stockton* and *Darlington* railway act; whether they were confined to exportation to foreign countries, or included shipments of coals to be carried coastwise to other parts of the kingdom. There is not, I think, any reason for adopting the narrower interpretation. The terms are large enough to comprehend both; and if it was a case of doubt, the rule is, in acts of this nature, to adopt the construction most beneficial to the public. I may further observe that, from the nature of the article, the home market would probably have been at least as much in the contemplation of the legislature as the foreign.

And the court adopted this view of the case (p. 605).

The reporters of the case in Manning and Granger append the following very significant note on page 155:

> The meaning of the term "exportation" will, it is conceived, depend upon the *termini* expressed or implied. Thus, when the legislature of the United Kingdom speaks of exportation, without saying from what place, the entire kingdom which is the subject of legislation will be the *terminus a quo* and some foreign country or countries the *terminus in quem*

But in this particular instance the act related not to exportation generally, but exportation from the particular port of Stockton-upon-Tees, and was not a customs duty for the benefit of the general public by way of increasing the revenues of the realm, but a toll for the benefit purely of the railroad company.

And see review of the case in *Foreman* v. *Peaslee* (*supra*).

The other case is *Muller* v. *Baldwin* (9th L. R., Q. B., 457).

This action related to certain coal dues which commissioners were appointed to demand as "River Tyne export dues," to be carried to the account of the Tyne Improvement Fund. The action was brought to recover certain of these dues collected by the authorized collector of dues for the Tyne Improvement Commission upon coals taken on shipboard at the port of Newcastle and carried out of port to be consumed during the voyage. The county court held that the term "exported" must receive a qualified interpretation and be taken to mean coals exported for the purpose of

commerce only. The appellate court agreed to the reasonableness of this distinction, but felt constrained to differ with the learned judge as to the construction of the act, holding that there was nothing in the language of the act to show that the word "exported" was used in any other than its ordinary sense, namely, carried out of the port.

It will be observed that the act construed had no reference to customs, but only to special tolls allowed by the act to the Tyne Improvement Company commissioners for the purpose of improvement of the river and harbor, a purpose which most properly demanded a liberal construction of the act.

THE MEANING DEFINITELY ESTABLISHED.

Thus we find established by the harmonious definitions of legal writers and in the uniform decisions of this court and of all other courts of the United States before which the question has been brought, that the word "exportation" has a technical commercial meaning, which is limited to the carrying out of the country of goods with intent to land the same in some foreign country, this intent being an essential and controlling fact in the case; and that when employed in its commercial sense, the word has never been construed to include a mere carrying out of port to another port in the same country, or upon the high seas. Such, at any rate, is the meaning of the word as employed in the Constitution, and it follows that the same meaning must be attached to it in the statutes of the United States, over which the Constitution is paramount.

The Constitution and the statute will be construed together as one law. (*Kentucky R. R. Tax Cases*, 115 U. S., 334.)

HISTORY OF DRAWBACK LEGISLATION.

An examination of the various statutes of the United States relating to the subject of drawback shows clearly that the constitutional meaning of an exportation in the usual commercial sense to foreign countries is contemplated in the same.

Section 3015 of the Revised Statutes, enacted March 2, 1799, provides as follows:

> A drawback of duties, as prescribed by law, shall be paid on all merchandise imported into the United States, in respect to all such merchandise as shall be exported *to any foreign port* other than the dominions of any foreign state immediately adjoining to the United States, either from the district of original importation or from certain other districts; and all duties, drawbacks, and allowances which shall be payable or allowable on any specific quantity of merchandise shall be deemed to apply in proportion to any greater or less quantity except as herein otherwise provided.

It will be perceived that this section clearly prescribed that the merchandise should be exported to a foreign port. The restriction as to contiguous territory was subsequently removed by sections 2977, 3053, and 3056, Revised Statutes.

On August 5, 1861, section 3019, Revised Statutes, was enacted in order to permit the refund of duties

paid, by way of drawback, on the exportation of articles manufactured wholly from imported materials. This section was merely an enlargement of section 3015, Revised Statutes, and was therefore to be construed in the light of that provision of the statutes. Section 25 of the act of October 1, 1890, section 22 of the act of August 28, 1894, and section 30 of the act of July 24, 1897, which are identical in terms, still further enlarge the provisions of section 3015, Revised Statutes, by permitting the allowance of drawback on the exportation of articles manufactured wholly or in part of imported materials. These subsequent provisions of law are to be construed in connection with section 3015 and sections 3043 to 3047, Revised Statutes, the latter sections relating to the production of landing certificates and the cancellation of bonds given therefor.

Section 3057, Revised Statutes, provides:

> The Secretary of the Treasury is hereby further authorized to prescribe such rules and regulations, not inconsistent with the laws of the United States, as he may deem necessary to carry into effect the provisions of the law relating to drawbacks, and to prevent the illegal reimportation of any merchandise which shall have been exported as herein provided.

Under this provision and the authority vested in the Secretary of the Treasury by section 30 of the act of July 24, 1897, drawback regulations were prescribed. (Circular No. 3 of January 14, 1901, T. D. 22721.)

Articles 1120 and 1141 of the Customs Regulations of 1899 prescribe that a party intending to export with the benefit of drawback any merchandise on which duty has been paid must file with the collector an entry * * * naming the vessel or conveyance in which and the *place to which* the same is to be exported.

Articles 1127 to 1129 and 1147 provide for a bond for the production of *proofs of landing abroad.*

By virtue of section 3057, Revised Statutes, and the well-settled doctrine regarding the force and effect of regulations of the Executive Departments, and having in view the respect which is paid by the courts to long-continued contemporaneous departmental construction of a statute, the foregoing requirements as to proofs of landing constitute an interpretation of the statute entitled to great weight in this case. It is urged, to be sure, by counsel for claimants that, whilst the first drawback statute used the phrase "exported to any foreign port," the statute of 1861 omitted the words "to any foreign port," and that this change must be taken to indicate an enlargement of the term "exported;" but the answer to this contention is obvious. At the time that the first drawback statute was enacted, in 1799, it was not at all certain that the word "exports," as used in the Constitution, did not include commerce between the States, and hence it was necessary in the earlier statute to restrict, in express terms, the application of the drawback statute to exportation to foreign countries, since interstate commerce

was not intended. Long before 1861, however, it had been decided in *Brown* v. *Maryland* that the word as used in the Constitution had reference to foreign commerce only, hence the words "to any foreign port" became superfluous.

WHEN EXPORTATION TERMINATES.

As already said, the logic of the reasoning of Chief Justice Marshall in *Brown* v. *Maryland* is this: If imports do not lose their character as such until they become mingled with the mass of commodities in the community, then exports do not cease to be such because the vessel upon which they are laden has left the port of export and is crossing the sea, but continue to be exports until, by arriving at the port of destination, they assume the character of imports.

Counsel for claimants seem to argue that because it has been held that the act of exportation is complete when the exported goods are laden on shipboard and the vessel has left port, therefore exportation, within the meaning of the drawback act, has been fully evidenced by proof of these facts only. But this argument slurs over one vital fact in the decisions quoted and wholly mistakes the force of the decisions themselves. In every case in which the act of exportation has been thus defined as complete, the *intent to land the goods in a foreign country* has first been shown. It follows, therefore, that although the act of exportation may be complete when goods *intended for foreign ports* are laden on a ship and the ship has left her port; nevertheless, the exportation is

not then *at an end* but *continues* until the ship has reached its port of destination with the intent to land the goods there. Then the export becomes an import; then, too, the act of importation is complete. And yet, as decided in *Brown* v. *Maryland*, the importation is *not at an end* until the goods have been not only landed and taken past the customs officers, but have been taken out of the original packages and mingled with domestic goods.

THE PRECISE QUESTION INVOLVED IN THE CASE.

Although counsel for claimant have been to considerable pains to show that there are two meanings of the word "exportation," its general meaning and a specific meaning, their industry in establishing this undisputed distinction seems to be but lost labor, for eventually they practically plant their case upon the specific meaning, by insisting that, properly construed, that meaning embraces their claim. And hence the question is narrowed down to this:

Did Congress, in enacting the drawback provision of the tariff act of 1894, use the word "exportation" with the meaning that is attached to it by the courts and by law writers generally, where the word is employed in its commercial sense, or did they intend it to comprehend every case in which goods are carried out of this country on board ships engaged in foreign trade, irrespective of any intent to land the same in some foreign port; or, more specifically, to ships' stores of such vessels?

The answer seems inevitable that the word was employed only in the sense in which it is universally understood when used in relation to commerce, and that it is not to be supposed that Congress could, by any possibility, have had in mind any such exceptional condition as appears in this case, so as to have intended that the words should have the application thus contended for. That is to say, it is unreasonable to suppose that Congress contemplated any other meaning of the word, as used in the drawback statute, than that uniformly given to it in that connection by every known legal authority.

The contention of the claimants takes the form of assertion that a ship engaged in the foreign trade is foreign territory—a foreign market. If this contention were confined to foreign ships there might be some color of reason for it, but no such limitation is made to the claim, and hence we have presented the curious proposition that an American ship, flying the American flag, whose deck is as sacred from foreign invasion as the home port from which she sails, is *foreign territory*. It seems to be unnecessary to add to this extraordinary statement anything by way of refutation. But, it is urged, the ship engaged in foreign trade is open, competitive territory, free to buy her ships' stores where she will, and *therefore* she is foreign territory. To begin with, this is not always the situation. The American ship that is entering upon her first foreign voyage certainly does not come within this category. Neither is it at all probable that *any* ship

in the foreign trade will at all times be in a perfectly independent position in the matter of purchasing her supplies. To a certain extent she would undoubtedly be obliged to replenish some portion of her stores at the beginning of each voyage. All these matters suggest such a wide difference in the circumstances surrounding the shipment of goods to foreign countries, and the sale of them as ships' stores to vessels in port, as to virtually do away with even an analogy between the two cases. There seems to be absolutely no warrant for the contention that a ship in the foreign trade is foreign territory. It involves the absurdity of depriving such ship of all national character and making it foreign territory to the whole world, including its own country. An accurate statement of the situation is that ships' stores are consumed in no particular country, but upon the high seas, which are no man's territory, but the common property of all. This question has been directly passed upon, and squarely against the contention of claimant, by Acting Attorney-General Richards, in an able opinion addressed to the Secretary of the Treasury (23 Opp. A. G., pp. 420, 421). The opinion cites the opinion of Attorney-General Brewster upon the same general question in 17 Opp. A. G., pp. 582 and 583, in which the following language is employed:

> There may be instances in the statutes where the word "export" is shown directly or by the context to have been used irregularly—as, for instance, in section 1955, where the exportation to Alaska from any port of the United States is

> spoken of—but these are exceptional, the effect being, of course, limited to what is in the same connection expressly provided, and therefore without influence but upon what ordinarily is the statutory use of the word. * * *
>
> As the legal notion of emigration is a going abroad with an intention of not returning, so that of exportation is a severance of goods from a mass of things belonging to this country, with an intention of uniting them with a mass of things belonging to some foreign country or other.

The drawback act has also quite recently been construed in *Kennedy* v. *The United States*, circuit court of appeals for the second circuit, 95 F. R., 129.

In this case it was contended by the claimant that jute bags leased to a steamship company for transportation of grain are exported, within the meaning of the drawback provisions of the customs administration act. The court held that—

> The exportation to which the statute refers is an exportation to a foreign country for use in such country or for sale. * * * The provisions all imply that the bags are to be or have been subjected to a foreign, as distinguished from a domestic, use. The bags in this case were leased to a steamship company to be used for transportation of grain and to be returned, and were employed on the ship as a part of its appliances for the transportation of freight, and, like the barrows and trucks on board the ship, which are the property for the time of the shipowners, were neither exported

> nor imported within the meaning of the tariff laws, but were a part of the furniture or equipment of the ship.

These words seem to apply very aptly to the facts in this case.

Claimant's counsel will have it that the position of the Government is, that there can be no exportation without a relanding of goods in a foreign port. This is an entire misapprehension. As already stated, and as appears beyond peradventure, it is the *intent to reland* in a foreign country that constitutes the essential element of an exportation and makes the act of exportation complete when the goods leave port on shipboard, thus destined. The proof of relanding which is demanded by the regulations of the Treasury Department is simply evidence that this intent is *bona fide* and has been carried out. The instances cited by counsel in which this proof of relanding has been excused are cases of such excusable casualty as seem to justify the leniency of the Treasury Department thus displayed, and nothing more can be gathered therefrom, for in every case the intent to reland in a foreign country had appeared beyond question.

THE INTENT OF THE STATUTE.

Much stress is placed by counsel for the claimant upon the supposed purpose of the drawback law, the contention being that this claim is wholly within that purpose. Of course, if the meaning of the words of the statute here in question is clear and unambiguous, that meaning must control and render any inquiry into

the intent of the statute unwarranted and unnecessary. However, the contention of the Government in this case has nothing to fear from such inquiry. That intent seems to be sufficiently set forth in the following quotation from the Campbell case, already cited in this brief:

> The purpose of the drawback provision is to make duty free imports which are manufactured here and then returned whence they came or to some other foreign country—articles which are not sold or consumed in the United States.

In the foregoing statement Justice Miller clearly had in mind the generally received interpretation of the term "exportation," to wit, the sending of goods in international commerce to some foreign country. And the force of the statement is not, as counsel for claimant would have it, at all weakened by the concluding phrase "articles which are not sold or consumed in the United States;" for this phrase is not employed as an equivalent of, nor in apposition to the preceding phrase, but as its complement.

In the case of the *Tidewater Oil Company* v. *The United States* (171 U. S.), the court says, on page 216:

> The object of the section was evidently not only to build up an export trade but to encourage manufactures in this country, where such manufactures are intended for exportation, by granting a rebate of duties upon the raw or prepared materials imported, and thus enabling the manufacturer to compete in *foreign markets* with the same articles manufactured in other countries.

It is perfectly apparent from these decisions that this court has construed the purpose of the drawback provision to be not only the encouragement of manufactures in this country, but the enlargement of our trade with foreign countries. No other meaning can be drawn from the language employed. There is nothing to indicate that the words "foreign markets" were employed in any other sense than their universally accepted meaning of markets in foreign countries. It is clear, too, that the benefits to be secured from foreign trade can only be fully realized by the sale of goods to foreign countries and would fail in many instances in the case of the sale of ships' stores in port.

But if, indeed, there can be any ambiguity found in the statute, the doubt should be solved in favor of the Government, since the claimant is claiming the benefit of a special privilege—exemption from the burden of a general statute.

> If there be any doubt as to the proper construction of a statute, then that construction must be adopted which is most advantageous to the interests of the Government. The statute being the grant of a privilege, must be construed most strongly in favor of the grantor. (*Hannibal, &c., R. R. Co.* v. *Packet Co.*, 125 U. S., 271.)

It is suggested by counsel for claimant that an unreasonable result might arise through the exportation of the oil in question to a foreign port, thus obtaining the drawback, and the purchase of the same at the foreign port for use as ships' stores by the very steamer that carried it. But the oil thus imported into a

foreign country would become thereby a foreign commodity, and its further use must be a matter of indifference to this country, unless it is sought to reexport it hither. But it is to be noted in this connection that if the oil were purchased by a steamer in a foreign port for use on its return voyage, the unused portion of the oil on board when the vessel arrived in an American port would not be an import, because not brought into port with intent to land the same.

JUDICIAL ENLARGEMENT OF THE STATUTE ASKED FOR.

The claim amounts to a request for judicial legislation. At best the claimant has shown that the sale of ships' stores to a vessel in the foreign trade, coupled with their consumption on the ship's voyages, is *analogous* to an exportation, and that such trade fulfills to some, and perhaps to a considerable extent the purposes of the drawback act. But this is not sufficient to justify the allowance of the claim, because these facts do not constitute an exportation, and it is by proof of exportation only that the right of drawback arises under the statute. The allowance, then, of this claim by the courts would be pure judicial legislation, which this court has never countenanced.

> No mere omission, no mere failure to provide for contingencies which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute. (*United States* v. *Goldenberg*, 168 U. S., p. 103.)

LOUIS A. PRADT,
Assistant Attorney-General.

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Supreme Court of the United States.

No. 256.—October Term, 1902.

The Western Union Telegraph Company, Plaintiff in Error, vs. The State of Missouri at the Relation and the Use of Chris. Gottlieb, Collector of the Revenue for Jackson County, Missouri.	In error to the Supreme Court of the State of Missouri.

[May 18, 1903.]

The defendant in error is the tax collector of Jackson County, Mo., and brough this action against the plaintiff in error in the Circuit Court of that county for the sum of $1,027.22, the taxes assessed against plaintiff in error for the year 1899, apportioned to Jackson County. The answer of the plaintiff in error alleged illegality in the taxes upon ~~three~~ two grounds: First, that the taxes were levied upon the franchise of the plaintiff in error, derived from the United States under certain acts of the Congress; second, that the State board of equalization, intending to injure the plaintiff by compelling it to pay an excessive and disproportionate share of State and local taxes, assessed its poles, wires and instruments at far more than their actual value.

The plaintiff in error is a telegraph company, incorporated by the State of New York. It does business in the State of Missouri, having offices in a number of cities of that State, and its lines run between those cities and to and from them to other places in the Union; in other words, the plaintiff in error engages in intrastate and interstate business. It claims to have no franchises from the State of Missouri, (except in an unimportant instance,) but occupies the streets of its cities, and its public roads and highways, by authority of the act of Congress of July 24, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the government the use of the same for postal, military and other purposes." The material part of section one of the act is as follows:

"Section 1. That any telegraph company now organized or which may hereafter be organized under the laws of any State in this Union, shall have the right to construct, maintain and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States, which have been or may hereafter be declared such by an act of Congress, and over, under or across the navigable streams or waters of the United States: *Provided*, That such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters and interfere with the ordinary travel of such military or post roads."

Section two provides that the messages between the officers and agents of the Government shall have priority, and be sent at rates to be fixed by the Postmaster General.

Section three forbids the transfer of the rights conferred by the act.

Section four gives the United States the power to purchase the telegraph lines, property and effects of any company availing itself of the benefits of the act.

Section four is as follows:

"*And be it further enacted*, That before any telegraph company shall exercise any of the powers or privileges conferred by this act, such company shall file their written acceptance with the Postmaster General of the restrictions and obligations required by this act."

Under the constitution and laws of Missouri, the State board of equalization, composed of the governor, secretary of State, State auditor, State treasurer and attorney general, assesses railroad and telegraph property, and it also equalizes the real and personal property assessed by the local assessors. Exercising its powers of original assessment, the board made the following order in regard to the property of plaintiff in error:

"State of Missouri, office of State auditor.

"Be it remembered that heretofore, to wit, on the twenty-fifth day of July, 1899, the following, among other proceedings, were had by the State board of equalization, viz:

"The State board of equalization having given to the Western Union Telegraph Company opportunity to be heard personally by the board, and having heard the said company, through its officers and agents, and having carefully considered the facts set out in the returns and the statements of said company, and all evidence of value, and all matters bearing upon the question of the value of the property of said company, and considering the cost of construction and equipment of said Western Union Telegraph Company, and the location thereof, and its traffic and business, and the market and par value of its stocks and bonds, and the gross receipts and net earnings and franchise owned by said company, and the value thereof, and having received evidence concerning the value of the cost of construction of said telegraph line, and the market value and par value of the stocks and bonds, and the gross receipts and net earning power, and the franchise and value thereof, and having heard evidence upon and considering all other matters ascertainable by said board bearing upon the question of the value of said company, which, in the opinion of the board, would assist in its findings, conclusions and judgment in arriving at the actual cash value of the property of said telegraph company; on motion the State board of equalization assesses and values for taxes of 1899 the property of said Western Union Telegraph Company at $1,827,727.45; and it is further ordered by the State board of equalization that the assessed value thereof be distributed upon the classes of property as follows:

6,075.98 miles of poles at $71.50 per mile	$434,432 57
23,767.34 miles of wire at $22.02 per mile	523,356 82
3,375 instruments at $5.70 each	13,537 50
All other property at	856,400 56
	$1,827,727 45"

The apportionment of the tax to Jackson County was as follows:

For State purposes	$202 43
For county purposes	283 40
For road purposes	35 41
For general county school purposes	370 61
For school building purposes	2 98
For other school purposes	19 03
For Kansas City municipal purposes	81 21
For Independence municipal purposes	25 38
For Kaw township railroad purposes	2 03
For Blue township railroad purposes	4 74
Total	$1,027 22

The case was tried without a jury and the trial court found "the fact to be from the evidence and the pleadings that the defendant owned in the State of Missouri, at the time of said assessment, the poles, wires and instruments of the value hereinbefore set forth. And the court finds the fact to be from the evidence that in valuing 'all other property' of defendant the State board took into consideration the franchise of defendant company, and the court finds under the law, and so declares, that the franchise of defendant company is not subject to valuation and taxation, and as to this item of the above-named valuation the court finds the issues for the defendant."

Judgment was entered against plaintiff in error in the sum of $605.82, being the tax on the poles, wires and instruments of the company, with interest at two per cent for collectors' fees, and also for an attorney's fees. The amount found due was made a first lien against the property of defendant in error, and special execution ordered to be issued. Both parties moved for a new trial, which motions were denied. Both parties then appealed to the Supreme Court of the State, which court reversed the judgment of the Circuit Court. After an elaborate discussion of the case the Supreme Court said:

"It follows that the judgment of the Circuit Court holding that the tax assessed against 'all other property at $856,400.56' to be unlawful, is erroneous, and that the plaintiff is entitled to a judgment for the whole amount of the tax sued for. Judgment is accordingly entered for the plaintiff here for $1,027.22, back taxes for the year 1899, with interest thereon from the first of January, 1900, at the rate of one per cent per month (R. S. 1899, sec. 9225), and costs."

This writ of error was then sued out. Other facts appear in the opinion.

Mr. Justice McKenna, after stating the facts, delivered the opinion of the Court.

On the question of fact, if it be such, as to what the item "of other property at $856,400.56," in the assessment by the board of equalization, was constituted of the trial court and the Supreme Court of the State, are not

in accord. The trial court found the "fact to be from the evidence that in valuation 'of other property' of defendant, the State board took into consideration the franchise of defendant company." It is apparent from the court's opinion that by franchise the court meant the rights and privileges obtained by the plaintiff in error under the act of Congress of July 24, 1866. The Supreme Court of the State, however, expressed its conclusion from the evidence, as follows:

"So, that, when, in determining the value of the property of the defendant in this State, the board of equalization took into consideration 'the cost of construction and equipment of said Western Union Telegraph Company, and the location thereof, and its traffic and business, and the par value of its stocks and bonds, and the gross receipts and net earnings and franchise owned by said company, and the value thereof,' it did not and could not have included therein any franchise derived by the defendant from the Government of the United States, because that Government had conferred no such franchise; nor was such a valuation placed upon 'all other property,' a tax upon the franchise of the defendant company. The franchise derived by the defendant from the State of New York was considered by the board in determining the value of the property of the defendant located in this State. That is, that property was valued not as so many poles, so much wire, so many instruments or so much 'other property,' in the abstract, but was valued in the concrete, in the relation that such property in the abstract bore to other property in the abstract, which being brought into relation toward each other—into a *system*, located partly in this State and partly in other States, gave each part a concrete value, which was much greater than its abstract value. The right to exist—the franchise—of the defendant was property, and was subject to taxation, either directly, in the proportion that the portion of the franchise exercised in this State bore to the proportion of the franchise exercised in all other States, or indirectly, as was done in Massachusetts and was done here, by being impressed upon the tangible property owned by it, thereby increasing its value, and by considering the franchise and its tangible property as a system, and then assessing the part of the property forming a part of the system and located in Missouri as of its proportionate value of the whole property constituting the system."

Plaintiff in error asserts the correctness of the finding of the trial court, and insists that it is the only finding that could have been made, and bases the argument against the taxes assessed on that insistence. But if the finding on the question is one of fact, necessarily we are bound by that made by the Supreme Court of the State. The trial court picked out the rights given to the defendant under the act of Congress, denominated them a franchise, contemplated the franchise as a distinct proprietary entity, and, because it was derived from the Federal goverment, decided that it was exempt from taxation. The necessary consequence was and is to destroy the relation between that franchise and the other properties of the plaintiff in error, regarding them, not as parts of the system, but abstractly—regarding the poles not differently from other poles, the wire

not different from other wire. The Supreme Court, on the contrary, regarded the properties as related and as constituting a system, and because of their relation having a value greater than the sum of the values of the individual things regarded merely as such. Viewing the order of the board of equalization, as the Supreme Court viewed it, was it valid? In other words, is the State in exercising its taxing power limited to assessing the mere material things used by the plaintiff in error, and must it regard them as of no greater value than they had when they reposed in lumber yards and factories, with cost added of putting them in place. Or the proposition may be stated another way, which better expresses the ultimate contention of the plaintiff in error. Conceding that the tangible property of the telegraph company derives value from its use in a system, does the company do business in the State in pursuance of the Constitution of the United States and the act of July, 1866, and become thereby an instrument of interstate commerce and a government agent, and as such exempt from the taxation contested in this case? We think the question has been answered by this court.

In *Western Union Telegraph Co.* v. *Massachusetts*, (125 U. S. 530,) the effect of the act of July, 1886, upon the power of the State to tax the property of telegraph companies was considered. The laws of Massachusetts imposed a tax upon the Western Union Telegraph Company on account of the property owned and used by it within that State, the value of which was ascertained by comparing the length of its lines within the State with the length of its entire lines. The tax was sustained. The act of July, 1866, was urged against the tax as it is urged here.

The contentions of the company in that case was, as it is in this, that it did not derive its existence from the State of Missouri, but from the State of New York; that it did not do business in the State of Missouri by permission of that State, but by virtue of being an instrument of interstate commerce; that its rights and privileges and franchises were conferred by the United States and constituted it an agent of the United States, and as such agent it was exempt from the tax imposed. The contentions were rejected. The court did not test or measure the power of the State by the name which its laws gave the tax, and, speaking by Mr. Justice Miller, said:

"The argument is very much pressed that it is a tax upon the franchise of the company, which franchise being derived from the United States by virtue of the statute above recited, cannot be taxed by a State, and counsel for appellant occasionally speak of the tax authorized by the law of Massachusetts upon this as well as all other corporations doing business within its territory, whether organized under its laws or not, as a tax upon their franchises. But by whatever name it may be called, as described in the laws of Massachusetts, it is essentially an excise upon the capital of the corporation. The laws of that Commonwealth attempt to ascertain the just amount which any corporation engaged in business within its limits shall pay as a contribution to the support of its government upon the amount and value of the capital so employed by it therein."

And that power of the State was explained in an elaborate opinion and sustained. These propositions were laid down: The company owed its existence as a corporation and its right to exercise the business of telegraphy to the laws of the State under which it was organized; that the privilege of running the lines of its wires over and along the military and post roads of the United States was granted by the act of Congress, but that the statute was merely permissive and conferred no exemption from the ordinary burdens of taxation; that the State could not by any specific statute prevent a corporation from placing its lines along the post roads or stop the use of them after they were so placed, but the corporation could be taxed in exchange from the protection it received from the State "upon its real or personal property as any other person would be." And describing the particular tax imposed it was said:

"The tax in the present case, though nominally upon the shares of the capital stock of the company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts, and the proportion of the length of its lines in that State to their entire length throughout the whole country is made the basis for ascertaining the value of that property. We do not think that such a tax is forbidden by the acceptance on the part of the telegraph company of the rights conferred by section 5263 of the Revised Statutes or by the commerce clause of the Constitution."

In other words, the lines in Massachusetts were regarded as a part of a system and assessed accordingly.

The statute of Massachusetts came up again for consideration in *Massachusetts* v. *Western Union Telegraph Co.*, (141 U. S. 40,) and the principles announced in *Western Union Telegraph Co.* v. *Massachusetts*, *supra*, were affirmed and followed. See also *Batterman* v. *Western Union Telegraph Co.*, (127 U. S. 411;) *Leloup* v. *Port of Mobile*, (Id. 640.)

These cases establish that in estimating the value of the property of a telegraph company situate within a State it may be regarded not abstractly or strictly locally, but as a part of a system operated in other States, and that the State was not precluded from taxing the property because the State had not created the company or conferred franchise upon it, or because it derived rights or privileges under the act of July, 1866, or was engaged in interstate commerce. Every one of the fundamental propositions, therefore, contended for by plaintiff in error, those decisions declare unsound.

But it is contended that the method of assessment followed in those cases was sustained because they were prescribed by the legislature, and that in the case at bar the method adopted was not prescribed or authorized by the laws of Missouri. The answer is obvious. What the laws of Missouri authorized was competent for the Supreme Court of Missouri to decide, and it decided that the order of the board of equalization was legal under the

constitution and statutes of the State. The decision, constituting as it does an interpretation of the constitution and laws of the State, is not open to dispute here. If it were, it would seem incontestable that the State could either prescribe the method or confer upon its taxing officers the power to adopt a suitable one. And there is nothing in the *Adams Express Company cases*, (166 U. S. 171, 226,) to the contrary.

2. The plaintiff in error asserts that the board of equalization practiced discrimination against it by assessing at a value disproportionate to the value assessed on real and personal property by local assessing officers. This defense was expressed as follows:

"Defendant avers that under the law it was the duty of said board of equalization to adjust and equalize as aforesaid the valuation of all real and personal property in the State of Missouri, among the several counties in the State, and that during the period aforesaid it did so proceed to adjust and equalize such valuations. That said State board of equalization, by common arrangement, understanding and purpose among themselves, in fact did during the period aforesaid, in violation of the constitution and laws of said State of Missouri, with intent to compel defendant to pay a greater proportion of taxes than the owners of other real and personal property in said State of Missouri, assess all property, to wit, other than the property of the telegraph companies, to wit, from thirty-five to forty per cent of its true value, whereby as to taxes levied upon real and personal property other than telegraph property in the State of Missouri, this defendant was unlawfully and wrongfully discriminated against to the extent of sixty per cent of the amount of taxes assessed by said State board of equalization and levied by the taxing officers of the State upon defendant in pursuance of such assessment."

Testimony was introduced to sustain the averments.

The Supreme Court of Missouri held, however, that plaintiff in error could not, even under the cases cited by it, avail itself of the defense. The court said:

"The defendant cannot avail itself of these cases, for the reasons, 1st, that it seeks to raise the question of discrimination by an defense to an action at law to collect the taxes, and thereby collaterally attacks the judgment of the board of equalization; 2d, that such questions can only be raised by a direct attack, in equity, and then only upon the condition precedent that it pays or tenders the amount justly due and only asks to have the collection of the excess restrained. This the defendant has not done in this case. It simply alleges a discrimination or excessive tax, and then seeks to defeat the whole assessment without paying or tendering anything, notwithstanding it admits by its answer and its proofs that it has property in this State subject to taxation of the value of $541,472.40. Upon the authority of the cases relied on by it, this cannot be done."

We concur in this view. The proceedings before the board were *quasi* judicial and the order made by it was within its jurisdiction. It was not void on its face, and cannot be resisted in an action at law. This is the principle announced in the case referred to. In *Stanley* v. *Supervisors of*

Albany is cited, among other cases, *Balfour* v. *City of Portland,* (28 Fed. Rep. 738.) The case is especially pertinent. The action was at law for the recovery of taxes paid under protest which had been levied upon property which, it was charged, had been deliberately overvalued. Recovery was denied. The Circuit Court said:

"The property was subject to taxation by the authority and for the purpose alleged. True, the result reached was erroneous, because of the willful disregard in the proceeding of the law requiring uniformity in the valuation of property for taxation within the jurisdiction of the defendant, still the proceeding being *quasi* judicial, and the subject matter within the jurisdiction of the officers who conducted it, the result reached is so far conclusive that the legality of it cannot be questioned in an action at law to recover back the one-half of the tax as illegal."

So this court said in *Stanley* v. *Supervisors:*

"It is only where the assessment is wholly void, or void with respect to separable portions of the property, the amount collected on which is ascertainable, or where the assessment has been set aside as invalid, that an action at law will lie for the taxes paid, or for a portion thereof. Overvaluation of property is not a ground of action at law for the excess of taxes paid beyond what should have been levied upon a just valuation. The courts cannot, in such cases, take upon themselves the functions of a revising or equalizing board. (*Newman* v. *Supervisors,* 45 N. Y. 676, 687; *Nat'l Bank of Chemung* v. *Elmira,* 53 N. Y. 49, 52; *Bruecher* v. *The Village of Portchester,* 101 N. Y. 240, 244; *Lincoln* v. *Worcester,* 8 Cush. 55, 63; *Hicks* v. *Westport,* 130 Mass. 478; *Balfour* v. *City of Portland,* 28 Fed. Rep. 738.)"

And we think overvaluation of property cannot be a ground of defense at law. In other words, the action of the tax officers, being in the nature of a judgment, must be yielded to until set aside. This can only be done in a direct proceeding. The property owner is in effect a plaintiff, and the condition of relief against the enforcement of the *quasi* judicial order, which he attacks, is a tender of payment of the taxes that he ought to pay. And this condition would still be upon him if he set up overvaluation as an equitable defense to an action brought against him. (*County of Los Angeles* v. *Ballerimo,* 99 Cal. 549, 597.) This certainly would be so in Missouri, under the doctrine expressed by the Supreme Court of the State in the case at bar.

Judgment affirmed.

Mr. Justice Brewer concurs in the result.

True copy.

Test:

Mr. Justice White and Mr. Justice Peckham dissent.

Clerk Supreme Court, U. S.

28152

Supreme Court of the United States.

No. 258.—October Term, 1902.

The Swan and Finch Company, Appellant, vs. The United States. } Appeal from the Court of Claims.

[May 18, 1903.]

Section 22 of the act of August 28, 1894, (28 Stat. 551,) re-enacted as section 30 of the act of July 27, 1897, (30 Stat. 211,) is as follows:

"Sec. 22. That where imported materials on which duties have been paid are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials the imported materials, or the parts of the articles made from such materials, shall so appear in the completed articles that the quantity or measure thereof may be ascertained: *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall, in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe."

During the years 1895, 1896, 1897, the appellant, a corporation engaged in business as importer, manufacturer and exporter of oils at New York city and elsewhere in the United States, having used in the manufacture of certain kinds of lubricating oils imported rape seed oil on which duties had been paid, placed on board of vessels bound for foreign ports, lubricating oils so manufactured, and claimed a drawback of the duties paid on the imported rape seed oil used therein. The Treasury Department allowed and paid the drawback on such manufactured oils as were shipped to foreign countries and there relanded, but refused to pay any on such as were placed on board for use and consumed in use on the vessels. The appellant brought this suit in the Court of Claims to recover the draw-

backs on the last named oils. That court decided against it, (37 Ct. Claims, 101,) and from such decision this appeal was taken.

Mr. Justice BREWER delivered the opinion of the Court.

The statute allows the drawback "on the exportation," and the question is whether goods placed on board a vessel bound for a foreign port, to be used and consumed on board the vessel during its voyage, and in fact so used and consumed, are exported.

The careful opinion of the Court of Claims, which in general we approve and to which we refer, relieves us from the necessity of an extended discussion. Whatever primary meaning be indicated by its derivation, the word "export," as used in the Constitution and laws of the United States, generally means the transportation of goods from this to a foreign country. "As the legal notion of emigrating is a going abroad with an intention of not returning, so that of exportation is a severance of goods from the mass of things belonging to this country with an intention of uniting them to the mass of things belonging to some foreign country or other." (17 Op. Attys. Gen. 583.)

True, the context may sometimes give to the word a narrower meaning, and in the execution of the administrative affairs of government it may have been applied to cases in which there was not in the full sense of the term an exportation, yet these are exceptions and do not destroy its general signification. It cannot mean simply a carrying out of the country, for no one would speak of goods shipped by water from San Francisco to San Diego as "exported," although in the voyage they are carried out of the country. Nor would the mere fact that there was no purpose of return justify the use of the word export. Coal placed on a steamer in San Francisco to be consumed in propelling that steamer to San Diego would never be so designated. Another country or State as the intended destination of the goods is essential to the idea of exportation.

Counsel for appellant, after quoting from several dictionaries, say:

"These definitions show that the word has two meaning:

"(1) Its primary, general or essential meaning—to carry or send out of a place; and

"(2) Its secondary, specific or especial meaning—to send out from one country to another.

"Of all goods sent out of this country but a small proportion fails to reach a foreign country; the amount consumed or lost at sea is minute in comparison. In ordinary use, therefore, the foreign destination is implied. We claim that, however usual, it is not essential, and that here the original and primary definition of the word should be applied to goods carried out of the country on vessels in the foreign trade, although they never reach a foreign country."

To this we are unable to yield our assent:

First. The fact that the words export and exportation are, as we have indicated, generally used in the sense of transportation from this to a foreign country, makes against the contention that it is here used in a different sense.

Second. The purpose with which the drawback statute was enacted is against it. In *Campbell* v. *United States*, (107 U. S. 407, 413,) we said:

"The purpose of the drawback provision is to make duty free, imports which are manufactured here and then returned whence they came or to some other foreign country—articles which are not sold or consumed in the United States."

So also in *Tidewater Oil Company* v. *United States*, (171 U. S. 210, 216):

"The object of the section was evidently not only to build up an export trade, but to encourage manufactures in this country, where such manufactures are intended for exportation, by granting a rebate of duties upon the raw or prepared materials imported, and thus enabling the manufacturer to compete in foreign markets with the same articles manufactured in other countries."

Third. The uniform construction placed by the department charged with the execution of the statute has been against it.

Fourth. Being a governmental grant of a privilege or benefit it is to be construed in favor of the government and against the party claiming the grant. Where the burden is placed upon a citizen, if there be a doubt as to the extent of the burden it is resolved in favor of the citizen, but where a privilege is granted any doubt is resolved in favor of the government. In *Hartranft* v. *Wiegmann*, (121 U. S. 609, 616,) the one rule was thus stated.

"We are of opinion that the decision of the Circuit Court was correct. But, if the question were one of doubt, the doubt would be resolved in favor of the importer, 'as duties are never imposed on the citizen upon vague or doubtful interpretations.' (*Powers* v. *Barney*, 5 Blatch. 202; *United States* v. *Isham*, 17 Wall. 496, 504; *Gurr* v. *Scudds*, 11 Exch. 190, 191; *Adams* v. *Bancroft*, 3 Sumner, 384.)" See also *American Net & Twine Company* v. *Worthington*, (141 U. S. 468, 474.)

On the other hand, in *Hannibal &c. Railroad Company* v. *Packet Company*, (125 U. S. 260, 271,) we said, citing several authorities:

"But if there be any doubt as to the proper construction of this statute, then that construction must be adopted which is most advantageous to the interests of the government. The statute being a grant of a privilege, must be construed most strongly in favor of the grantor."

For these reasons we think the judgment of the Court of Claims was correct, and it is

Affirmed.

Mr. Justice BROWN and Mr. Justice PECKHAM dissented.